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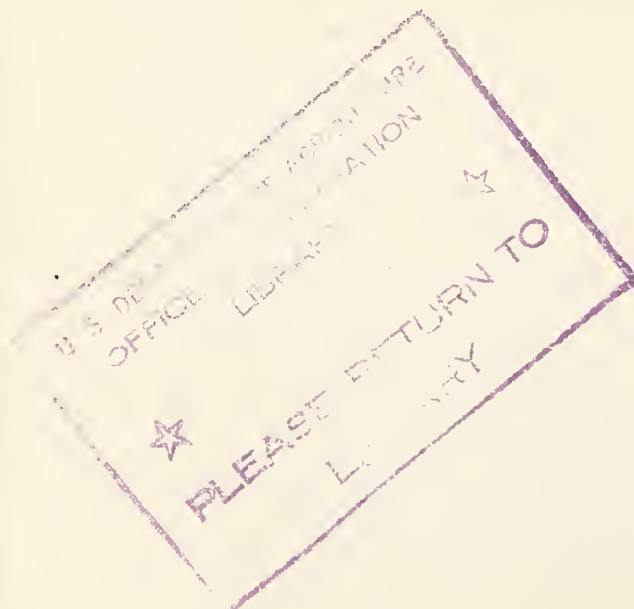
**THE**  
**TWENTY- EIGHT HOUR LAW**  
**AND THE**  
**ANIMAL QUARANTINE**  
**LAWS ANNOTATED**



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Issued January 2, 1915.

U. S. DEPARTMENT OF AGRICULTURE,  
OFFICE OF THE SOLICITOR.

FRANCIS G. CAFFEY, SOLICITOR.

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THE TWENTY-EIGHT HOUR LAW AND  
THE ANIMAL QUARANTINE  
LAWS ANNOTATED.

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Act of Congress approved June 29, 1906,  
C. 3594, 34 Stat 607.

Act of Congress approved May 29, 1884,  
C. 60, 23 Stat. 31.

Act of Congress approved February 2, 1903,  
C. 349, 32 Stat. 791.

Act of Congress approved March 3, 1905,  
C. 1496, 33 Stat. 1264.

Act of Congress approved March 4, 1913,  
C. 145, 37 Stat. 828, 831.



WASHINGTON:  
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1915.

## LETTER OF TRANSMITTAL.

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U. S. DEPARTMENT OF AGRICULTURE,  
OFFICE OF THE SOLICITOR,  
*Washington, D. C., November 5, 1914.*

SIR: I recommend the publication of the manuscript transmitted herewith, which is an annotation of the act of Congress approved June 29, 1906, commonly known as the "Twenty-eight Hour Law," and the Animal Quarantine Acts of May 29, 1884, February 2, 1903, and March 3, 1905.

All of the decisions of the courts contained in the publication of October 2, 1908, entitled "The Twenty-eight Hour Law Annotated," all decisions under the Twenty-eight Hour Law reported since that publication was issued, and all decisions reported under the Animal Quarantine Laws are included.

This annotation has been prepared under my direction by Mr. Harry Goding of this office.

It is believed that this publication will be of material help to officers of the Government interested in the trial of cases under the statutes mentioned.

Respectfully,

FRANCIS G. CAFFEY, *Solicitor.*

Hon. DAVID F. HOUSTON,  
*Secretary of Agriculture.*



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## INTRODUCTION.

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The original act of Congress to prevent cruelty to animals in interstate transit by common carriers was passed by the Forty-second Congress, third session, and approved by the President on March 3, 1873 (17 Stat., 584). This act was incorporated in the Revised Statutes of the United States, first edition, as sections 4386 to 4390, inclusive. Comparatively few cases went to trial under this statute, and it was repealed and supplanted by the present law, commonly known as the "Twenty-eight Hour Law," which was approved and became effective on June 29, 1906 (34 Stat., 607).

Since the present Twenty-eight Hour Law has been in effect a great number of cases reported by the Department of Agriculture to the Department of Justice for prosecution have been tried in the courts, and reports of some of these cases now appear in the volumes of the Federal Reporter and the United States Reports. The Department of Agriculture has published, in a series of circulars, some of the decisions of the courts in cases involving salient points of the statute for the use and information of officers of the Department, of common carriers, and of the United States courts and district attorneys. Many of the cases are in accord as to leading questions of construction of the statute.

A few cases arising under the Animal Quarantine Laws of May 29, 1884 (23 Stat., 31); February 2, 1903 (32 Stat., 791); and March 3, 1905 (33 Stat., 1264), have also been reported in the Federal Reporter and the United States Reports, and these decisions are likewise covered in this publication.

The decisions published in the Federal Reporter, the United States Reports, and the circulars of the Department have reached considerable volume. The purpose of this annotation is to bring this material together in brief form in one volume and to furnish a convenient means of reference to these decisions of the courts construing the various parts of the statutes.

This publication contains annotations of the laws cited, with brief abstracts from the decisions of the Federal courts in cases that have been prosecuted under the acts since they went into effect and up to the present time, including also abstracts from five cases and an opinion of the Attorney General of the United States under sections 4386-4390 of the Revised Statutes of the United States, which are deemed applicable also to the present Twenty-eight Hour Law.





## TEXT OF TWENTY-EIGHT HOUR LAW (ACT OF JUNE 29, 1906).

AN ACT To prevent cruelty to animals while in transit by railroad or other means of transportation from one State or Territory or the District of Columbia into or through another State or Territory or the District of Columbia, and repealing sections forty-three hundred and eighty-six, forty-three hundred and eighty-seven, forty-three hundred and eighty-eight, forty-three hundred and eighty-nine, and forty-three hundred and ninety of the United States Revised Statutes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That no railroad, express company, car company, common carrier<sup>1a</sup> other than by water, or the receiver, trustee, or lessee<sup>2</sup> of any of them, whose road forms any part of a line of road over which cattle, sheep, swine, or other animals<sup>3</sup> shall be conveyed from one State or Territory or the District of Columbia into or through another State<sup>4</sup> or Territory or the District of Columbia, or the owners or masters of steam, sailing, or other vessels carrying or transporting cattle, sheep, swine, or other animals from one State or Territory or the District of Columbia into or through another State or Territory or the District of Columbia, shall confine<sup>5</sup> the same in cars, boats, or vessels of any description for a period longer than twenty-eight consecutive hours<sup>6</sup> without unloading the same in a humane manner, into properly equipped pens<sup>7</sup> for rest, water, and feeding,<sup>8</sup> for a period of at least five consecutive hours, unless prevented by storm or by other accidental or unavoidable causes<sup>9</sup> which can not be anticipated or avoided by the exercise of due diligence and foresight:<sup>10</sup> *Provided,* That upon the written request of the owner or person in custody of that particular shipment, which written request shall be separate and apart from any printed bill of lading, or other railroad form, the time of confinement may be extended to thirty-six hours.<sup>11</sup> In estimating<sup>12</sup> such confinement, the time consumed in loading and unloading shall not be considered, but the time during which the animals have been confined without such rest or food or water on connecting roads shall be included, it being the intent<sup>13</sup> of this act to prohibit their continuous confinement beyond the period of twenty-eight hours, except upon the contingencies hereinbefore stated:<sup>14</sup> *Provided,* That it shall not be required that sheep<sup>15</sup> be unloaded in

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<sup>a</sup> Figures refer to cross references given on page 17.

the nighttime, but where the time expires in the nighttime<sup>16</sup> in case of sheep the same may continue in transit to a suitable place for unloading, subject to the aforesaid limitation of thirty-six hours.

SEC. 2. That animals so unloaded shall be properly fed and watered during such rest either<sup>17</sup> by the owner or person having the custody thereof, or in case of his default in so doing, then by the railroad, express company, car company, common carrier other than by water, or the receiver, trustee, or lessee of any of them, or by the owners or masters of boats or vessels transporting the same, at the reasonable expense of the owner or person in custody thereof, and such railroad, express company, car company, common carrier other than by water, receiver, trustee, or lessee of any of them, owners or masters, shall in such case have a lien upon such animals for food, care, and custody furnished, collectible at their destination in the same manner as the transportation charges are collected, and shall not be liable for any detention of such animals, when such detention is of reasonable duration, to enable compliance with section one of this act; but nothing in this section shall be construed to prevent the owner or shipper of animals from furnishing food therefor, if he so desires.

SEC. 3. That any railroad, express company, car company, common carrier other than by water, or the receiver, trustee, or lessee of any of them, or the master or owner of any steam, sailing, or other vessel who knowingly<sup>18</sup> and willfully<sup>19</sup> fails to comply with the provisions of the two preceding sections shall for every<sup>20</sup> such failure be liable for and forfeit and pay a penalty<sup>21</sup> of not less than one hundred nor more than five hundred dollars: *Provided*, That when animals are carried in cars, boats, or other vessels in which they can and do have proper food, water, space,<sup>22</sup> and opportunity to rest the provisions in regard to their being unloaded shall not apply.

SEC. 4. That the penalty created by the preceding section shall be recovered by civil<sup>23</sup> action in the name of the United States in the circuit or district court holden within the district<sup>24</sup> where the violation may have been committed or the person or corporation resides or carries on business; and it shall be the duty of United States attorneys to prosecute all violations of this act reported by the Secretary of Agriculture, or which come to their notice or knowledge by other means.

SEC. 5. That sections forty-three hundred and eighty-six, forty-three hundred and eighty-seven, forty-three hundred and eighty-eight, forty-three hundred and eighty-nine, and forty-three hundred and ninety of the Revised Statutes of the United States be, and the same are hereby, repealed.

Approved, June 29, 1906.



## TEXT OF ACT OF MAY 29, 1884.

AN ACT For the establishment of a Bureau of Animal Industry, to prevent the exportation of diseased cattle, and to provide means for the suppression and extirpation of pleuro-pneumonia and other contagious diseases among domestic animals. (23 Stat., 31.)

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Commissioner of Agriculture shall organize in his department a Bureau of Animal Industry, and shall appoint a Chief thereof, who shall be a competent veterinary surgeon, and whose duty it shall be to investigate and report upon the condition of the domestic animals of the United States, their protection and use, and also inquire into and report the causes of contagious, infectious, and communicable diseases among them, and the means for the prevention and cure of the same, and to collect such information on these subjects as shall be valuable to the agricultural and commercial interests of the country; and the Commissioner of Agriculture is hereby authorized to employ a force sufficient for this purpose, not to exceed twenty persons at any one time. The salary of the Chief of said Bureau shall be three thousand dollars per annum; and the Commissioner shall appoint a clerk for said Bureau, with a salary of one thousand five hundred dollars per annum.

SEC. 2. That the Commissioner of Agriculture is authorized to appoint two competent agents, who shall be practical stock-raisers or experienced business men familiar with questions pertaining to commercial transactions in live stock, whose duty it shall be, under the instructions of the Commissioner of Agriculture, to examine and report upon the best methods of treating, transporting, and caring for animals, and the means to be adopted for the suppression and extirpation of contagious pleuro-pneumonia, and to provide against the spread of other dangerous contagious, infectious, and communicable diseases. The compensation of said agents shall be at the rate of ten dollars per diem, with all necessary expenses, while engaged in the actual performance of their duties under this act, when absent from their usual place of business or residence as such agent.

SEC. 3. That it shall be the duty of the Commissioner of Agriculture to prepare such rules and regulations as he may deem necessary for the speedy and effectual suppression and extirpation of said diseases, and to certify such rules and regulations to the executive authority

of each State and Territory, and invite said authorities to co-operate in the execution and enforcement of this act. Whenever the plans and methods of the Commissioner of Agriculture shall be accepted by any State or Territory in which pleuro-pneumonia or other contagious, infectious, or communicable disease is declared to exist, or such State or Territory shall have adopted plans and methods for the suppression and extirpation of said diseases, and such plans and methods shall be accepted by the Commissioner of Agriculture, and whenever the governor of a State or other properly constituted authorities signify their readiness to co-operate for the extinction of any contagious, infectious, or communicable disease in conformity with the provisions of this act, the Commissioner of Agriculture is hereby authorized to expend so much of the money appropriated by this act as may be necessary in such investigations, and in such disinfection and quarantine measures as may be necessary to prevent the spread of the disease from one State or Territory into another.

SEC. 4. That in order to promote the exportation of live stock from the United States the Commissioner of Agriculture shall make special investigation as to the existence of pleuro-pneumonia, or any contagious, infectious, or communicable disease, along the dividing-lines between the United States and foreign countries, and along the lines of transportation from all parts of the United States to ports from which live stock are exported, and make report of the results of such investigation to the Secretary of the Treasury, who shall, from time to time, establish such regulations concerning the exportation and transportation of live stock as the results of said investigations may require.

SEC. 5. That to prevent the exportation from any port of the United States to any port in a foreign country of live stock affected with any contagious, infectious, or communicable disease, and especially pleuro-pneumonia, the Secretary of the Treasury be, and he is hereby, authorized to take such steps and adopt such measures, not inconsistent with the provisions of this act, as he may deem necessary.

SEC. 6. That no railroad company within the United States, or the owners or masters of any steam or sailing or other vessel or boat, shall receive for transportation or transport, from one State or Territory to another; or from any State into the District of Columbia, or from the District into any State, any live stock affected with any contagious, infectious, or communicable disease, and especially the disease known as pleuro-pneumonia; nor shall any person, company, or corporation deliver for such transportation to any railroad company, or master or owner of any boat or vessel, any live stock, knowing them to be affected with any contagious, infectious, or communicable disease; nor shall any person, company, or corporation drive <sup>25</sup>



on foot or transport in private conveyance from one State or Territory to another, or from any State into the District of Columbia, or from the District into any State, any live stock, knowing them to be affected with any contagious, infectious, or communicable disease, and especially the disease known as pleuro-pneumonia: *Provided*, That the so-called splenetic or Texas fever shall not be considered a contagious, infectious, or communicable disease within the meaning of sections four, five, six and seven of this act, as to cattle being transported by rail to market for slaughter, when the same are unloaded only to be fed and watered in lots on the way thereto.

SEC. 7. That it shall be the duty of the Commissioner of Agriculture to notify, in writing, the proper officials or agents of any railroad, steamboat, or other transportation company doing business in or through any infected locality,<sup>26</sup> and by publication in such newspapers as he may select, of the existence of said contagion; and any person or persons operating any such railroad, or master or owner of any boat or vessel, or owner or custodian of or person having control over such cattle or other live stock within such infected district, who shall knowingly violate the provisions of section six of this act, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than one hundred nor more than five thousand dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment.

SEC. 8. That whenever any contagious, infectious, or communicable disease affecting domestic animals, and especially the disease known as pleuro-pneumonia, shall be brought into or shall break out in the District of Columbia, it shall be the duty of the Commissioners of said District to take measures to suppress the same promptly and to prevent the same from spreading; and for this purpose the said Commissioners are hereby empowered to order and require that any premises, farm, or farms where such disease exists, or has existed, be put in quarantine; to order all or any animals coming into the District to be detained at any place or places for the purpose of inspection and examination; to prescribe regulations for and to require the destruction of animals affected with contagious, infectious, or communicable disease, and for the proper disposition of their hides and carcasses; to prescribe regulations for disinfection, and such other regulations as they may deem necessary to prevent infection or contagion being communicated, and shall report to the Commissioner of Agriculture whatever they may do in pursuance of the provisions of this section.

SEC. 9. That it shall be the duty of the several United States district attorneys to prosecute all violations of this act which shall be brought to their notice or knowledge by any person making the complaint under oath; and the same shall be heard before any district or circuit



court of the United States or Territorial court holden within the district in which the violation of this act has been committed.

SEC. 10. That the sum of one hundred and fifty thousand dollars, to be immediately available, or so much thereof as may be necessary, is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, to carry into effect the provisions of this act.

SEC. 11. That the Commissioner of Agriculture shall report annually to Congress, at the commencement of each session, a list of the names of all persons employed, an itemized statement of all expenditures under this act, and full particulars of the means adopted and carried into effect for the suppression of contagious, infectious, or communicable diseases among domestic animals.

Approved, May 29, 1884.

## TEXT OF ACT OF FEBRUARY 2, 1903.

AN ACT To enable the Secretary of Agriculture to more effectually suppress and prevent the spread of contagious and infectious diseases of live stock, and for other purposes. (32 Stat., 791.)

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in order to enable the Secretary of Agriculture to effectually suppress and extirpate contagious pleuropneumonia, foot and mouth disease, and other dangerous contagious, infectious, and communicable diseases in cattle and other live stock, and to prevent the spread of such diseases, the powers conferred on the Secretary of the Treasury by sections four and five of an act entitled "An act for the establishment of a Bureau of Animal Industry, to prevent the exportation of diseased cattle, and to provide means for the suppression and extirpation of pleuropneumonia and other contagious diseases among domestic animals," approved May twenty-ninth, eighteen hundred and eighty-four (twenty-third United States Statutes, thirty-one), are hereby conferred on the Secretary of Agriculture, to be exercised exclusively by him. He is hereby authorized and directed, from time to time, to establish such rules and regulations<sup>27</sup> concerning the exportation and transportation of live stock from any place within the United States where he may have reason to believe such diseases may exist into and through any State or Territory, including the Indian Territory, and into and through the District of Columbia and to foreign countries, as he may deem necessary, and all such rules and regulations shall have the force of law. Whenever any inspector or assistant inspector of the Bureau of Animal Industry shall issue a certificate showing that such officer had inspected any cattle or other live stock which were about to be shipped, driven, or transported from such locality to another, as above stated, and had found them free from Texas or splenetic fever infection, pleuropneumonia, foot and mouth disease, or any other infectious, contagious, or communicable disease, such animals, so inspected and certified, may be shipped, driven, or transported from such place into and through any State or Territory, including the Indian Territory, and into and through the District of Columbia, or they may be exported from the United States without further inspection or the exaction of fees of any kind, except such as may at any time be ordered or exacted by the Secretary of Agriculture; and all such animals shall at all times be under the

control and supervision of the Bureau of Animal Industry of the Agricultural Department for the purposes of such inspection.

SEC. 2. That the Secretary of Agriculture shall have authority to make such regulations and take such measures as he may deem proper to prevent the introduction or dissemination of the contagion of any contagious, infectious, or communicable disease of animals from a foreign country into the United States or from one State or Territory of the United States or the District of Columbia to another, and to seize, quarantine, and dispose of any hay, straw, forage, or similar material, or any meats, hides, or other animal products coming from an infected foreign country to the United States, or from one State or Territory or the District of Columbia in transit to another State or Territory or the District of Columbia whenever in his judgment such action is advisable in order to guard against the introduction or spread of such contagion.

SEC. 3. That any person, company, or corporation knowingly violating the provisions of this act or the orders or regulations made in pursuance thereof shall be guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment not more than one year, or by both such fine and imprisonment.

Approved, February 2, 1903.



## TEXT OF ACT OF MARCH 3, 1905.

AN ACT To enable the Secretary of Agriculture to establish and maintain quarantine districts, to permit and regulate the movement of cattle and other live stock therefrom, and for other purposes. (33 Stat., 1264.)

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of Agriculture is authorized and directed to quarantine any State or Territory or the District of Columbia, or any portion of any State or Territory or the District of Columbia, when he shall determine the fact that cattle or other live stock in such State or Territory or District of Columbia are affected with any contagious, infectious, or communicable disease; and the Secretary of Agriculture is directed to give written or printed notice<sup>28</sup> of the establishment of quarantine to the proper officers of railroad, steamboat, or other transportation companies doing business in or through any quarantined State or Territory or the District of Columbia, and to publish in such newspapers in the quarantined State or Territory or the District of Columbia, as the Secretary of Agriculture may select, notice of the establishment of quarantine.

SEC. 2. That no railroad company<sup>29</sup> or the owners or masters of any steam or sailing or other vessel or boat shall receive for transportation or transport from any quarantined State or Territory or the District of Columbia, or from the quarantined portion of any State or Territory or the District of Columbia, into any other State or Territory or the District of Columbia, any cattle or other live stock, except as hereinafter provided; nor shall any person, company, or corporation deliver for such transportation to any railroad company, or to the master or owner of any boat or vessel, any cattle or other live stock, except as hereinafter provided; nor shall any person, company, or corporation drive on foot, or cause to be driven on foot, or transport in private conveyance or cause to be transported in private conveyance, from a quarantined State or Territory or the District of Columbia, or from the quarantined portion of any State or Territory or the District of Columbia, into any other State or Territory or the District of Columbia, any cattle or other live stock, except as hereinafter provided.

SEC. 3. That it shall be the duty of the Secretary of Agriculture, and he is hereby authorized and directed, when the public safety will permit, to make and promulgate<sup>30</sup> rules and regulations<sup>31</sup> which

shall permit and govern the inspection, disinfection, certification, treatment, handling, and method and manner of delivery and shipment of cattle or other live stock from a quarantined State or Territory or the District of Columbia, and from the quarantined portion of any State or Territory or the District of Columbia, into any other State or Territory or the District of Columbia; and the Secretary of Agriculture shall give notice of such rules and regulations in the manner provided in section two of this act for notice of establishment of quarantine.

SEC. 4. That cattle or other live stock may be moved from a quarantined State or Territory or the District of Columbia, or from the quarantined portion of any State or Territory or the District of Columbia, into any other State or Territory or the District of Columbia, under and in compliance with the rules and regulations of the Secretary of Agriculture, made and promulgated in pursuance of the provisions of section three of this act: but it shall be unlawful to move, or to allow to be moved, any cattle or other live stock from any quarantined State or Territory or the District of Columbia, or from the quarantined portion of any State or Territory or the District of Columbia, into any other State or Territory or the District of Columbia, in manner or method or under conditions other than those prescribed by the Secretary of Agriculture.

SEC. 5. That every person who forcibly assaults, resists, opposes, prevents, impedes, or interferes with any officer or employee of the Bureau of Animal Industry of the United States Department of Agriculture in the execution of his duties, or on account of the execution of his duties, shall be fined not less than one hundred dollars nor more than one thousand dollars, or be imprisoned not less than one month nor more than one year, or by both such fine and imprisonment; and every person who discharges any deadly weapon at any officer or employee of the Bureau of Animal Industry of the United States Department of Agriculture, or uses any dangerous or deadly weapon in resisting him in the execution of his duties, with intent to commit a bodily injury upon him or to deter or prevent him from discharging his duties, or on account of the performance of his duties, shall, upon conviction, be imprisoned at hard labor for a term not more than five years or fined not to exceed one thousand dollars.

SEC. 6. That any person, company, or corporation violating the provisions of sections two or four of this act shall be guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment not more than one year, or by both such fine and imprisonment.

Approved, March 3, 1905.



AMENDMENT OF MARCH 4, 1913. (37 STAT., 828, 831.)

That hereafter all the provisions of the said act approved March third, nineteen hundred and five, shall apply to any railroad company or other common carrier, whose road or line forms any part of a route over which cattle or other live stock are transported in the course of shipment from any quarantined State or Territory or the District of Columbia, or from the quarantined portion of any State or Territory or the District of Columbia, into any other State or Territory or the District of Columbia; \* \* \*.

REFERENCES TO ANNOTATIONS.

- (1) See Parties Amenable, p. 20; Defenses, notes *a*, *b*, *c*, and *e*, pp. 42 and 43.
- (2) See Parties Amenable, note *i*, p. 21.
- (3) See "Other Animals," p. 23.
- (4) See Parties Amenable, notes *j*, *r*, *s*, and *t*, pp. 21, 22, and 23.
- (5) See Period of Confinement, note *a*, p. 29.
- (6) See Parties Amenable, notes *l* and *o*, p. 22; "Knowingly," notes *f* and *g*, p. 24.
- (7) See "Properly Equipped Pens," notes *a*, *b*, *c*, *d*, and *e*, p. 35; "Knowingly and Willfully," note *b*, p. 26.
- (8) See Unloading for Rest, Water, and Feeding, p. 34; appendix, pp. 51 and 52.
- (9) See "Knowingly and Willfully," p. 25; "Knowingly and Willingly," p. 29; "Accidental or Unavoidable Causes," p. 30; Evidence, notes *d* and *n*, pp. 38 and 39.
- (10) See Due Diligence and Foresight, p. 44.
- (11) See Constitutionality, notes *b* and *d*, p. 18; Thirty-six Hour Request, p. 41.
- (12) See Period of Confinement, notes *b*, *c*, *d*, *e*, *f*, *g*, and *h*, pp. 29 and 30; "Knowingly," notes *b*, *c*, *d*, and *e*, pp. 23 and 24; Evidence, note *o*, p. 39.
- (13) See Purpose, p. 19.
- (14) See Defenses, note *c*, p. 42.
- (15) See "Sheep," p. 32.
- (16) See "In the Nighttime," p. 34.
- (17) See Unloading for Rest, Water, and Feeding, note *f*, p. 35.
- (18) See "Knowingly," p. 23; "Knowingly and Willfully," p. 25; "Knowingly and Willingly," p. 29.
- (19) See "Willfully," p. 24; "Knowingly and Willfully," p. 25.
- (20) See Unit of Violation, p. 36.
- (21) See Assessment of the Penalty, p. 37.
- (22) See Space in Cars, p. 43.
- (23) See Evidence, p. 37; Rule of Construction, p. 39; Depositions, p. 43; Writs of Error, p. 44.
- (24) See Venue, p. 23; Constitutionality, notes *a* and *c*, p. 18.
- (25) See Parties Amenable, p. 46.
- (26) See Rules and Regulations, p. 46.
- (27) See Rules and Regulations, p. 46.
- (28) See Notice, p. 48.
- (29) See Parties Amenable, p. 47.
- (30) See "Make" and "Promulgate," p. 48.
- (31) See Rules and Regulations, p. 48.



## TWENTY-EIGHT HOUR LAW ANNOTATIONS.

[Cases decided in 1907 and subsequently are under the act of June 29, 1906 (34 Stat. 607). Cases decided prior to 1907 are under sections 4386-4390 R. S. and are each marked below with an asterisk.]

### CONSTITUTIONALITY.

*a.* Since an action against an interstate carrier for violation of the statute is a civil action to recover a penalty, section 4, authorizing such action to be brought in the district where the violation may have been committed or the person or corporation resides or carries on business, is not unconstitutional as a violation of the Sixth Amendment to the Federal Constitution.

*Southern Pacific Co. v. U. S.*, 171 Fed. 364. (C. C. A. 1909.)

*b.* The provision of the statute authorizing the owner or person in custody of a shipment of live stock to extend the time of confinement to thirty-six hours is not such a delegation of legislative power as renders the law unconstitutional.

*Southern Pacific Co. v. U. S.*, 171 Fed. 360. (C. C. A. 1909.) Circular No. 23, Office of the Solicitor, Department of Agriculture.

*c.* An action under the Twenty-eight Hour Law, as provided in its fourth section, may lawfully be brought and tried in the district wherein the defendant resides or carries on business. This provision of the law is not in conflict with section 2 of article 3 of the Constitution, nor with the Sixth Amendment thereto.

*St. Louis & San Francisco R. Co. v. U. S.*, 169 Fed. 69. (C. C. A. 1909.) Circular No. 17, Office of the Solicitor, Department of Agriculture.

*d.* The provision in the statute that live stock in transit may be continued up to thirty-six hours at the written request of the shipper does not constitute a delegation of legislative power or authority to the owner or shipper, and the act is not thereby made unconstitutional.

*U. S. v. Oregon Railroad & Navigation Co.*, 163 Fed. 640 (1908). Circular No. 8, Office of the Solicitor, Department of Agriculture.

*e.* It is competent for Congress to provide for recovery of penalties imposed for violation of a statute either by a criminal or a civil action.

*U. S. v. Chicago & North Western R. Co.* (1908). Circular No. 5, Office of the Solicitor, Department of Agriculture.

*f.* \* The statute (secs. 4386-4390 R. S.) is directly within the terms of that clause of the Constitution which confers upon Congress the power to regulate commerce among the several States, and is constitutional.

*U. S. v. Boston & Albany R. Co.*, 15 Fed. 209 (1883).

PURPOSE.

*a.* The purpose of the Twenty-eight Hour Law is to prevent any carrier from transporting animals in interstate commerce for a longer period than twenty-eight consecutive hours without unloading the same in a humane manner into properly equipped pens for rest, water, and feeding, for at least five consecutive hours.

*U. S. v. Atlantic Coast Line R. Co.*, 173 Fed. 764 (C. C. A. 1909). Circular No. 21, Office of the Solicitor, Department of Agriculture.

*b.* The object and purpose of this act is to prevent or reduce to a minimum the cruelty incident to the transportation of live stock.

*U. S. v. Southern Pacific Co.* (1909). Circular No. 20, Office of the Solicitor, Department of Agriculture.

*c.* The act is a humane act, intended to prevent cruelty to animals, and the act also has in view the protection of the interests of owners of animals and of the public, in preventing their health and condition being injured in transit.

*U. S. v. Pere Marquette R. Co.*, 171 Fed. 586 (1909). Circular No. 19, Office of the Solicitor, Department of Agriculture.

*d.* The real purpose of the statute is to alleviate the condition of dumb animals in transit.

*U. S. v. Union Pacific R. Co.*, 169 Fed. 65 (C. C. A. 1909). Circular No. 14, Office of the Solicitor, Department of Agriculture.

*e.* The act has a twofold purpose: To prevent the cruel treatment of animals in their handling and care, and to subserve the interests of the owner.

*U. S. v. Oregon Railroad & Navigation Co.*, 133 Fed. 649 (1908). Circular No. 8, Office of the Solicitor, Department of Agriculture.

*f.* The primary purpose of the statute is to prevent cruelty to animals while in the course of transportation by railroad or other conveyance. It may also have been to prevent damages to the owner by reason of such confinement.

*U. S. v. Sioux City Stock Yards Co.*, 162 Fed. 556 (1908).

*g.* The general purpose of the statute was to prohibit the inhuman treatment of domestic animals in the possession of common carriers.

*U. S. v. Oregon Short Line R. Co.*, 160 Fed. 526 (1908). Circular No. 6, Office of the Solicitor, Department of Agriculture.

*h.* The object and purpose of the act is to insure the humane treatment of animals in their interstate transportation upon cars.

*U. S. v. Southern Pacific Co.*, 157 Fed. 459 (1907). Circular (unnumbered), Office of the Solicitor, Department of Agriculture.

*i.* The purpose of the statute is remedial, and for humane purposes. One purpose is to prevent the slaughtering of animals for food when in a feverish condition brought about by long confinement without food, water, and rest. But the main purpose is to prevent cruelty to animals shipped.

*U. S. v. St. Joseph Stock Yards Co.*, 181 Fed. 625 (1909). Circular No. 25, Office of the Solicitor, Department of Agriculture.

*j.\** The statute (secs. 4386-4390 R. S.) was passed not more from considerations of sympathy for the cattle than to protect the public from imposition and from unwholesome food.

*U. S. v. Louisville & Nashville R. Co.*, 18 Fed. 480 (1883).



## PARTIES AMENABLE.

## STOCKYARD COMPANIES AND RAILROADS.

*a.* A stockyards company authorized by its articles of incorporation to construct and maintain railroad tracks, and to own or lease and operate engines and cars for hire, which transports live stock delivered by other interstate railroad companies between their terminals and the stockyards, and hauls freight of the packing houses from one to the other, and cars loaded with ice or fuel to such houses from different railroads entering the city, is a railroad company or common carrier other than by water, within the Twenty-eight Hour Law, which prohibits any railroad or common carrier other than by water, whose road forms a part of a line of road over which animals shall be conveyed from one State to another, from confining the same for a longer period than twenty-eight consecutive hours without unloading.

U. S. *v.* Sioux City Stock Yards Co., 162 Fed. 556 (1908).

*b.* A stockyards company, doing what is known as a terminal business, owning and maintaining switch tracks encircling its stockyards and connecting therewith and with trunk line railroads from which it receives and to which it delivers cars, so that all live stock in and out of its stockyards must pass over its lines and switches, and operating for the purpose locomotives with crews of men, issuing no bills of lading and receiving no part of the freight charges paid to the trunk line companies, but charging for each car moved from the connection of the trunk lines to its stockyards or to packing houses, is a railroad company and a common carrier of freight for hire, with the rights, duties, and obligations of a common carrier of freight for hire.

U. S. *v.* St. Joseph Stock Yards Co., 181 Fed. 625 (1909). Circular No. 25, Office of the Solicitor, Department of Agriculture.

## TERMINAL RAILROAD COMPANIES.

*c.* The Fort Worth Belt Railway Company, transporting live stock from railway terminals at Fort Worth, Texas, to Fort Worth Stockyards, is amenable to the Twenty-eight Hour Law.

U. S. *v.* Fort Worth Belt Ry. Co. (1908). Circular No. 11, Office of the Solicitor, Department of Agriculture.

*d.* A terminal railroad company, which receives live stock from other carriers for transportation and delivery to another company or to stockyards, is a "connecting carrier," within the meaning of the Twenty-eight Hour Law, and is subject to its provisions as to interstate shipments.

U. S. *v.* Northern Pacific Term. Co., 181 Fed. 879 (1909). Circular No. 30, Office of the Solicitor, Department of Agriculture.

*e.* A terminal railroad company which received from another carrier live stock which had already been confined beyond the statutory period without food, rest, and water, and moved them to the stockyards with all speed possible, and there unloaded them for rest, water, and feed is not chargeable with violation of the statute, but on the contrary, its action aided in giving effect to its object and purpose.

Northern Pacific Terminal Co. *v.* U. S., 184 Fed. 603. (C. C. A. 1911.)



*f.* Where a terminal company's railroad forms a part of a continuous line of interstate transportation over which live stock are transported, and the animals have been confined without food, rest, and water beyond the statutory period as prescribed by the Twenty-eight Hour Law before delivery to the terminal company for transportation to the stockyard for unloading, the terminal company is under no obligation to accept the cattle from its connecting carrier under such circumstances and is liable under the statute.

*U. S. v. Northern Pacific Term. Co.*, 186 Fed. 947 (1911). Circular No. 53, Office of the Solicitor, Department of Agriculture.

*g.* A terminal railroad company, though controlled by associated railroads for which it operates terminal yards, is nevertheless a distinct corporation and separate entity from any of such associated railroads, and in accepting live stock from its connecting carrier which had been confined beyond the statutory period without food, rest, and water and further transporting them to the stockyards, where they were unloaded, violated the statute and is not relieved from liability on the theory that it was acting merely as an agent of the initial carrier.

*U. S. v. Northern Pacific Term. Co.*, 186 Fed. 947 (1911). Circular No. 53, Office of the Solicitor, Department of Agriculture.

*h.* \*The Terminal Railroad Association of St. Louis or the St. Louis Merchants' Bridge Terminal Railway Company, which accept at St. Louis, Missouri, live stock which has been confined in cars of connecting railways for a period longer than twenty-eight hours without having been unloaded for rest, water, and feeding, and carry and deliver the stock across the Mississippi River to the National Stock Yards in Illinois, are liable to the penalty imposed by section 4386, R. S., unless the failure of the connecting carriers to unload was due to storm or other accidental causes, or unless the stock were carried in cars in which it had an opportunity for feed, rest, and water.

XXV Op. Atty. Gen. 411 (1905).

#### LESSEES.

*i.* The statute is aimed at the corporation actually operating the road. It assumes that the lessee is the active operator, and a declaration which, following the language of the statute, describes the defendant carrier as "lessee" is sufficient in this particular.

*U. S. v. New York Central & Hudson River R. Co.*, 165 Fed. 833. (C. C. A. 1908.) Circular No. 15, Office of the Solicitor, Department of Agriculture.

#### CARRIERS IN GENERAL.

*j.* Where shipments of live stock are transported from one State of the United States through a foreign country, and into another State, the carrier handling them within the United States, at the last stage of the journey, is subject to the Twenty-eight Hour Law if at the time it accepts the stock the statutory limit has expired.

*U. S. v. Lehigh Valley R. R. Co. et al.*, 184 Fed. 971 (1911). Affirmed 187 Fed. 1006. Circular No. 44, Office of the Solicitor, Department of Agriculture.

k. Every railroad company forming any part of an interstate line, over which such stock is being shipped, that participates in such carriage beyond the limit, acts in contravention of the law.

U. S. v. Northern Pacific Terminal Co., 186 Fed. 947 (1911). Circular No. 53, Office of the Solicitor, Department of Agriculture. New York Central & Hudson R. R. Co. v. U. S., 203 Fed. 953. (C. C. A. 1913.) Circular No. 73, Office of the Solicitor, Department of Agriculture.

l. Keeping the animals confined after the twenty-eight hour period has expired without legal excuse is an offense under this law. Such illegal confinement is a continuing act, and all connecting corporations participating in such act of illegal confinement become liable to the penalty.

U. S. v. Delaware, L. & W. R. Co., 206 Fed. 513. (D. C. 1913.)

m. Where a car of live stock is in the custody of a local instrumentality selected by a carrier and used by the carrier to discharge its duties both to the shipper and under the statute, such local instrumentality, even though a corporation, is an employee of the carrier the same as its individual servants, and the carrier is responsible for the conduct of such terminal company.

U. S. v. Union Pacific R. Co., 213 Fed. 332 (C. C. A. 1914).

n. \* Section 4386 R. S. is unambiguous, and is clearly designed to prevent any "railroad company within the United States whose railroad forms *any part of a line of road* over which cattle, sheep, swine, or other animals are conveyed from one State to another" from transporting such animals under conditions other than those set forth in the statute.

XXV Op. Atty. Gen. 411 (1905).

o. \*A railroad company which accepts stock for transportation when the animals have already been confined for more than twenty-eight consecutive hours without unloading for feed, rest, and water is undoubtedly liable to the penalty which sec. 4388 R. S. provides.

XXV Op. Atty. Gen. 411 (1905).

p. \* The carrier with whom the contract for shipment is made is not liable for the penalty under sec. 4388 R. S. because others in the chain of connecting carriers violated the law after the stock had passed out of the control of the first carrier.

U. S. v. Louisville & Nashville R. Co., 18 Fed. 480 (1883).

q. \* That carrier alone is liable for the penalty imposed by section 4388 R. S. which had actual manual possession of the animals at the expiration of twenty-eight hours after they were loaded.

U. S. v. Louisville & Nashville R. Co., 18 Fed. 480 (1883).

r. \* The statute does not apply to lines which lie wholly within the territorial limits of a State.

U. S. v. Louisville & Nashville R. Co., 18 Fed. 480 (1883).

s. \*A railroad company in a State whose road forms a part of a line over which live animals are conveyed from another State, and which receives from connecting roads to be transported in the State animals which have been brought from another State, is engaged in interstate commerce and is within the terms of sections 4386-4390 R. S.

U. S. v. Boston & Albany R. Co., 15 Fed. 209 (1883).



*t.* \* Section 4386, R. S., by its terms imposes a penalty only upon railroads which convey swine, sheep, etc., from *one State to another*. It does not embrace a shipment of swine from one point to another within the same State over a line entirely within the State.

U. S. v. East Tennessee, Virginia and Georgia R., 13 Fed. 642 (1882).

### VENUE.

Actions to recover penalties under the Twenty-eight Hour Law may be brought in any one of three districts—the district where the offense is committed, the district where the defendant resides, or a district where it carries on its business.

U. S. v. Chicago & North Western Ry. Co. (1908). Circular No. 5, Office of the Solicitor, Department of Agriculture.

See also St. Louis & San Francisco R. Co. v. U. S., 169 Fed. 69. (C. C. A. 1909.) Circular No. 17, Office of the Solicitor, Department of Agriculture.

Also Southern Pacific Co. v. U. S., 171 Fed. 364. (C. C. A. 1909.)

### “OTHER ANIMALS.”

\* The term “other animals” employed in the statute (sec. 4386, R. S.) includes mules and horses.

U. S. v. Louisville & Nashville R. Co., 18 Fed. 480 (1883).

### “KNOWINGLY.”

*a.* “*Knowingly*” in the Twenty-eight Hour Law simply means with knowledge of the facts.

U. S. v. Southern Pacific Co. (1909). Circular No. 20, Office of the Solicitor, Department of Agriculture.

*b.* “*Knowingly*” in the Twenty-eight Hour Law means with a knowledge of the facts which, taken together, constitute the failure to comply with the statute. A carrier which receives from another a shipment of cattle with knowledge of how long they have been confined without rest, feed, or water, and prolongs the confinement beyond the statutory period, “*knowingly*” violates the law.

St. Louis & San Francisco R. Co. v. U. S., 169 Fed. 69. (C. C. A. 1909.) Circular No. 17, Office of the Solicitor, Department of Agriculture. St. Joseph Stockyards Co. v. U. S., 187 Fed. 105. (C. C. A. 1911.) Oregon-Washington R. & Nav. Co. v. U. S., 205 Fed. 337, 339. (C. C. A. 1913.)

*c.* It is the duty of a railroad company holding itself out to transport live stock to *know* when shipments are delivered to it and to use reasonable diligence in ascertaining how long stock so delivered have been in the cars without unloading for rest, feed, and water.

U. S. v. Fort Worth Belt Ry. Co. (1908). Circular No. 11, Office of the Solicitor, Department of Agriculture.

*d.* A railroad company *knowingly* violates the statute if it has knowledge of the fact that animals have not been unloaded for rest, feed, and water within the prescribed time, or if it has means of knowledge of which it is bound to avail itself and which if followed by diligent inquiry would have brought the fact home to it, whether it avails itself of such means or not.

U. S. v. Fort Worth Belt Ry. Co. (1908). Circular No. 11, Office of the Solicitor, Department of Agriculture.



*e.* Common carriers are chargeable under the statute with knowledge not only of what its agents actually knew, but of what they could have ascertained by the exercise of reasonable inquiry.

U. S. *v.* Colorado & Southern Ry. Co. (1908). Circular No. 7, Office of the Solicitor, Department of Agriculture.

*f.* A complaint to recover the penalties prescribed by the statute is fatally defective if it fails to allege that the defendant "knowingly" confined the animals in excess of twenty-eight hours. This is true even if the shipment was made exclusively upon the defendant's line of road.

U. S. *v.* Oregon Short Line R. Co., 160 Fed. 526 (1908). Circular No. 6, Office of the Solicitor, Department of Agriculture.

*g.* Plaintiff's allegation that cattle had been confined by a connecting carrier for nineteen and one-half hours, and were further "knowingly and willfully" confined by the defendant for a period less than twenty-eight hours, is not equivalent to an allegation that the defendant "knowingly" confined the animals in excess of twenty-eight hours, and the complaint is fatally defective.

U. S. *v.* Oregon Short Line R. Co., 160 Fed. 526 (1908). Circular No. 6, Office of the Solicitor, Department of Agriculture.

#### "WILLFULLY."

*a.* "Willfully" as used in the Twenty-eight Hour Law means intentionally and voluntarily.

U. S. *v.* Southern Pacific Co. (1909). Circular No. 20, Office of the Solicitor, Department of Agriculture.

*b.* "Willfully" in the Twenty-eight Hour Law means purposely or obstinately, and is designed to describe the attitude of a carrier who intentionally disregards the statute, or is plainly indifferent to its requirements.

St. Louis & San Francisco R. Co. *v.* U. S., 169 Fed. 69. (C. C. A. 1909.) Circular No. 17, Office of the Solicitor, Department of Agriculture. St. Joseph Stockyards Co. *v.* U. S., 187 Fed. 105. (C. C. A. 1911.) Chicago, Burlington & Q. R. Co. *v.* U. S., 194 Fed. 342. (C. C. A. 1912.) Circular No. 63, Office of the Solicitor, Department of Agriculture. Oregon-Washington R. & Nav. Co. *v.* U. S., 205 Fed. 337, 339. (C. C. A. 1913.) St. Louis Merchants' Bridge T. Ry. Co. *v.* U. S., 209 Fed. 601. (C. C. A. 1913.)

*c.* "Willfully" in the Twenty-eight Hour Law means only the intentional doing of an act forbidden by the statute.

U. S. *v.* Union Pacific R. Co., 169 Fed. 65. (C. C. A. 1909.) Circular No. 14, Office of the Solicitor, Department of Agriculture.

*d.* Defendant's admission in the answer that the company knowingly, that is intentionally, confined animals beyond the prescribed period, is an admission also that it was *willfully* done.

U. S. *v.* Union Pacific R. Co., 169 Fed. 65. (C. C. A. 1909.) Circular No. 14, Office of the Solicitor, Department of Agriculture.

*e.* The word "willfully" in the Twenty-eight Hour Law does not require that there should be an evil intent to constitute the offense, but it is sufficient if the act was done knowingly and purposely.

U. S. *v.* New York Central & Hudson River R. Co., 165 Fed. 833. (C. C. A. 1908.) Circular No. 15, Office of the Solicitor, Department of Agriculture.

*f.* The defendant, being a free agent, "willfully" violated the statute if it knew what it was doing and intended to do what it did.

U. S. *v.* Fort Worth Belt Ry. Co. (1908). Circular No. 11, Office of the Solicitor, Department of Agriculture.

*g.* A carrier which receives stock after they have already been confined more than thirty-six consecutive hours, and delivers them at the next place where they can be unloaded for rest, food, and water with all reasonable dispatch, with the facilities it has for handling them, although it might have learned by inquiry that they had not been unloaded within the prescribed period, can not be held to have acted willfully in confining the cattle after it had received them, or to have participated in confining them any part of the time for which the penalty sought to be imposed was incurred.

U. S. *v.* Sioux City Stock Yards Co., 162 Fed. 556 (1908).

[Judgment in the foregoing case was affirmed on appeal on the following grounds: "An opinion of the trial judge, setting forth the reasons for his decision in an action at law tried by a circuit court without the intervention of a jury, can not be regarded as a special finding within the meaning of R. S. 649, 700." The court expressly refrained from expression upon the propositions of law advanced by the trial judge in support of his conclusion. *Id.*, 167 Fed. 126. (C. C. A. 1909.)]

*h.* The word "willfully" in the statute can not be construed to denote evil intent. It is synonymous with "voluntarily" or "intentionally."

U. S. *v.* Atchison, Topeka & Santa Fe R. Co., 166 Fed. 160 (1908). Circular No. 4, Office of the Solicitor, Department of Agriculture.

*i.* Failure to comply with the law is not *willful* if it is due to unavoidable causes.

U. S. *v.* Oregon Short Line R. Co., 160 Fed. 526 (1908). Circular No. 6, Office of the Solicitor, Department of Agriculture.

*j.* In a complaint to recover penalties under the statute, an allegation that the defendant acted willfully is equivalent to an allegation that unloading within the prescribed time was not prevented by storm or by other accidental or unavoidable causes.

U. S. *v.* Oregon Short Line R. Co., 160 Fed. 526 (1908). Circular No. 6, Office of the Solicitor, Department of Agriculture.

#### "KNOWINGLY AND WILLFULLY."

*a.* The words "knowingly and willfully" in the Twenty-eight Hour Law do not import an evil intent or motive. Lack of foresight and due diligence on the part of agents of a carrier engaged in the transportation of live stock is imputable to the carrier, and the consequent failure of agents, having knowledge of the facts concerning a particular shipment, to comply with the requirements of the law, is a willful failure, notwithstanding such precautions as the carrier may have taken to insure strict compliance by its conductors, agents, and other persons.

U. S. *v.* Atlantic Coast Line R. Co., 173 Fed. 764. (C. C. A. 1909.) Circular No. 21, Office of the Solicitor, Department of Agriculture.



b. It can not be said that a carrier "knowingly and willfully" violated the law when, at the time the cattle were loaded, there was a reasonable expectation that they could be carried within the period prescribed by the statute to a place where properly equipped pens were available for rest, feed, or water, but the cattle were actually unloaded at an intermediate point into pens which were not properly equipped within the sense of the statute on account of an unexpected situation or emergency, *for which no fault is alleged against the carrier*, whereby it became impossible to convey the cattle within the prescribed period to the point where properly equipped pens had been provided by the carrier and were ordinarily used for the purpose.

St. Louis & San Francisco R. Co. v. U. S., 169 Fed. 69. (C. C. A. 1909.)  
Circular No. 17, Office of the Solicitor, Department of Agriculture.

c. To "*knowingly and willfully fail and neglect to feed or water said cattle*" is an offense only under the second section of the statute. The words are not sufficient to properly describe an offense under the first section. If the count, however, properly declares an offense under that section, these words may be stricken out as surplusage on motion, but if no motion is made therefor they become immaterial matter.

U. S. v. New York Central & Hudson River R. Co., 165 Fed. 833. (C. C. A. 1908.) Circular No. 15, Office of the Solicitor, Department of Agriculture.

d. Averment by a defendant railroad company that horses were confined in violation of the statute, by reason of the "oversight, forgetfulness, and unintentional neglect" of its train dispatchers, expressly negatives the claim that failure to rest and feed and water the horses was not the result of knowledge and willfulness on the part of the company.

Montana Central R. Co. v. U. S., 164 Fed. 400. (C. C. A. 1903.) Circular No. 12, Office of the Solicitor, Department of Agriculture.

e. A carrier knowingly and willfully violates the statute if it loads stock at one of its stations, when, according to the schedule or ordinary running time of the train, it can not reach a place where they may be unloaded and given rest, food, and water within the prescribed time, and they are not in fact given such rest, food, and water.

U. S. v. Sioux City Stock Yards Co., 162 Fed. 556 (1908).

f. In an action to recover the penalty prescribed by the statute, proof is not required that the defendant confined the animals with a malevolent purpose of cruelly torturing them, or of damaging the owner. The more reasonable interpretation of the words "knowingly and willfully" is that the penalty is incurred if the defendant knowingly and intentionally or purposely confined the stock beyond the twenty-eight or thirty-six hour period.

U. S. v. Sioux City Stock Yards Co., 162 Fed. 556 (1908).

g. A railway company "knowingly and willfully" violates the Twenty-eight Hour Law if the company, or its agents and servants who had charge of the shipments, knew, or by reasonable inquiry could have ascertained, the hour at which the sheep were loaded and that they had not been unloaded up to the time the cars came into



their possession and it continues the confinement of the animals beyond their prescribed period.

U. S. v. Colorado & Southern R. Co. (1908). Circular No. 7, Office of the Solicitor, Department of Agriculture.

*h.* A carrier *knowingly and willfully* fails to comply with the requirements of the statute in respect to unloading, rest, and feeding when the agents and servants in charge of the train knowingly confine animals for a period longer than that prescribed by the statute, provided they are not prevented from unloading to give them rest, by storm or other accident or unavoidable cause, which could not have been anticipated or avoided by the exercise of due diligence and foresight.

U. S. v. Southern Pacific Co., 157 Fed. 459 (1907). Circular (unnumbered), Office of the Solicitor, Department of Agriculture.

*i.* The failure of an employee of a carrier to inform other employees that live stock were in the cars does not relieve the company from liability for having *willfully and knowingly* failed to comply with the provisions of the Twenty-eight Hour Law.

U. S. v. Great Northern R. Co. (1907). Circular No. 1, Office of the Solicitor, Department of Agriculture.

*j.* In an action to recover the penalty prescribed by the Twenty-eight Hour Law, the United States must aver and establish by affirmative testimony the truth of the averment that the defendant did "knowingly and willfully" fail to comply with the provisions of the statute.

U. S. v. Louisville & Nashville R. Co., 157 Fed. 979 (1907).

*k.* A carrier which receives live stock from a connecting carrier after the animals have been already confined beyond the period prescribed by the Twenty-eight Hour Law, and continues their transportation for several hours more before unloading, is liable for negligence *per se*. Whether the carrier knowingly and willfully fails to comply with the statute is a question for submission to the jury.

U. S. v. New York Central & Hudson R. Co., 156 Fed. 249 (1907).

*l.* The defendant having received the cattle for the sole purpose of feeding, watering, and resting them, without knowing that they had been confined in the cars exceeding the time allowed by the statute, and having used due diligence in carrying them to the stockyards and unloading them, we do not think it can be said that it either intentionally disregarded the statute or was plainly indifferent to its requirements, and the judgment must be affirmed.

U. S. v. Stockyards Terminal Ry. Co., 178 Fed. 19, 23. (C. C. A. 1910.) Circular No. 23, Office of the Solicitor, Department of Agriculture.

*m.* No penalty is incurred by a carrier if it accepts live stock simply for the purpose of unloading them for feed, rest, and water, where they have been already confined beyond the statutory limit, provided the movement of such stock by the carrier is substantially a part of the process of unloading, and not a continuance of the act of transportation.

In addition to the penalty incurred by the initial carrier, any connecting carrier incurs a new penalty if it knowingly and willfully

accepts and continues to transport live stock, theretofore confined by the initial carrier beyond the statutory period, without water, feed, or rest.

*U. S. v. Lehigh Valley R. R. Co. et al.*, 184 Fed. 971 (1911). Affirmed, 187 Fed. 1006. Circular No. 44, Office of the Solicitor, Department of Agriculture.

*n.* The words "knowingly and willfully" do not imply a wanton or malicious purpose but a failure to exercise diligence by the receiving carrier in unloading for rest, food, and water after receiving the live stock and having reason to know that the animals had not been rested or given food and water within the time specified in the act.

*U. S. v. New York Central & Hudson R. R. Co.* (1911). Circular No. 62, Office of the Solicitor, Department of Agriculture.

*o.* When a stockyards company, without knowledge or notice that cattle have been confined in violation of the law, takes and unloads them at a time and place and in a manner which most speedily ends their confinement, and provides them with rest, food, and water, it obeys the spirit and accomplishes the end of the Twenty-eight Hour Law, and it does not "knowingly" or "willfully" confine the cattle in violation of the statute.

*St. Joseph Stockyards Co. v. U. S.*, 187 Fed. 104. (C. C. A. 1911.)

*p.* It is not essential to the recovery of the penalty that proof should be made that the defendant knew that the animals did not receive proper food, water, or space to rest in the cars which transported them. It is enough that the railroad company knowingly and willfully confined them more than twenty-eight hours and the animals did not have proper food, water, space, and opportunity to rest in the cars that carried them during the transportation.

*Chicago, Burlington & Quincy R. R. Co. v. U. S.*, 195 Fed. 241. (C. C. A. 1912.) Circular No. 64, Office of the Solicitor, Department of Agriculture.

*q.* A knowing and willful omission to perform a duty is not the same as a careless omission. It is not possible to omit an act knowingly and willfully, unless the act be consciously in the mind; if it be no longer in the mind, it can not be within the range of either knowledge or intention.

*U. S. v. Lehigh Valley R. Co.*, 204 Fed. 705. (C. C. A. 1913.) Circular No. 75, Office of the Solicitor, Department of Agriculture.

*r.* If a terminal company performs a switching or interchange service, such fact, while not relieving it from the obligations of the statute, is of controlling importance, when considered with the further concession that the quickest and only way in which animals can be unloaded is by the performance of such switching service from the receiving tracks of the terminal company to the unloading platforms at the stockyards, and horses thus transported by the terminal company are not "knowingly and willfully" confined by the terminal company in violation of the statute.

*U. S. v. Chicago Junction Ry. Co.*, 211 Fed. 726 (1913).

*s.* When a connecting carrier, without actual knowledge of the initial carrier, returned cars of live stock upon the interchange track of such initial carrier, where they remained until the statutory



period had expired, the initial carrier has not "willfully and knowingly" failed to obey the statute.

U. S. v. Chicago, Rock I. & P. Ry. Co., 211 Fed. 771 (1913).

### "KNOWINGLY AND WILLINGLY."

[The word "*willfully*" appears in the original act of March 3, 1873, but when this statute was incorporated in the Revised Statutes (sec. 4388) the word "*willingly*" was substituted therefor.]

\*A carrier must be deemed to have "*knowingly and willingly*" violated the law, unless he was prevented from unloading for rest, food, and water as required by law by a cause which could not have been avoided by due care. Accident to a train due to negligence does not excuse the carrier.

Newport News & Mississippi Valley Co. v. U. S., 61 Fed. 488 (1894).

### PERIOD OF CONFINEMENT.

a. The words "confine the same" mean no more than ordinary transportation of cattle in the ordinary railroad cars used for that purpose. A declaration in which words having the same effect are substituted for these words of the statute is not open to objection, certainly after verdict, and the requirements of the law in this particular are fully complied with.

U. S. v. New York Central & Hudson River R. Co., 165 Fed. 823. (C. C. A. 1908.) Circular No. 15. Office of the Solicitor, Department of Agriculture.

*See also* Unit of Violation, *infra*.

b. In estimating the period of confinement, time consumed in loading animals upon cars and in unloading them out of cars shall not be included as a part of the time during which a carrier has the right to confine the animals under the statute.

U. S. v. Southern Pacific Co., 157 Fed. 459 (1907). Circular (unnumbered), Office of the Solicitor, Department of Agriculture.

*See also* "Sheep," *infra*.

c. A carrier which accepts for transportation live stock which has been already confined by a connecting carrier beyond the prescribed period, and continues to transport the animals for several additional hours before unloading the same, is *prima facie* guilty of a violation of the Twenty-eight Hour Law.

U. S. v. New York Central & Hudson River R. Co., 156 Fed. 249.

d. In estimating the time during which live stock have been confined by a connecting carrier, without water, feed, or rest, the period during which they had been so confined, in excess of the statutory limit, by the preceding carrier, at the time of delivery to the connecting carrier, is not to be counted, where the preceding carrier has been already sued for so confining the live stock and has been subjected therefor to the penalty imposed by the act.

U. S. v. Stockyards Terminal Co., 172 Fed. 452 (1909). Circular No. 26, Office of the Solicitor, Department of Agriculture.



*e.* And I construe section 2 as not enlarging the time which is given under the first section for loading and unloading. And it does not seem to me that the switching of the animals from one track to the other about the switching yards should be deducted from the time of carriage; but simply that space of time that would be required in putting the animals aboard the car, and in unloading them when it is necessary to unload them—that time shall not be included in the time of carriage.

*U. S. v. Northern Pacific Terminal Co.*, 181 Fed. 879 (1909). Circular No. 30, Office of the Solicitor, Department of Agriculture.

*f.* The contention that the court erred in refusing to charge the jury “that no violation of the provisions of this law on the part of the defendant occurred while the cattle were in transportation through Canada” can not be maintained.

*Grand Trunk Ry. Co. of Canada v. U. S.*, 191 Fed. 803. (C. C. A. 1911.) Circular No. 59, Office of the Solicitor, Department of Agriculture.

*g.* The law is applicable to a shipment originating in one State and ending in another when the deprivation of food, water, and rest for the statutory period is shown, even though part of such period elapsed while the animals were in a foreign country.

*Grand Trunk Ry. Co. of Canada v. U. S.*, 191 Fed. 803. (C. C. A. 1911.) Circular No. 59, Office of the Solicitor, Department of Agriculture.

*h.* The language excluding the time consumed in unloading can not avail the carrier. That exemption requires a continuous unloading of the animals. If the work is commenced before the limit expires, or at its expiration, and is carried on with reasonable dispatch until the shipment is unloaded, the time thus consumed is no part of the limitation. The statute, however, is directed at the confinement of the animals without food, drink, and rest, and this covers confinement in cars in the yard the same as in cars during transit.

*U. S. v. Northern Pac. Ry. Co.* (1914). Circular No. 77, Office of the Solicitor, Department of Agriculture.

*i.* \*The time during which animals have been confined without rest, water, or feed on connecting roads from which they are received shall be included in estimating whether the animals have been confined beyond the period prescribed by the statute.

*U. S. v. Oregon Short Line R. Co.*, 160 Fed. 526 (1908), Circular No. 6, Office of the Solicitor, Department of Agriculture; *U. S. v. Louisville & Nashville R. Co.*, 18 Fed. 480 (1883), XXV Op. Atty. Gen. 411 (1905).

#### “ACCIDENTAL OR UNAVOIDABLE CAUSES.”

*a.* The failure of a conductor to examine a waybill on which a shipment of calves is noted is negligence on the part of the defendant company, and if in consequence the calves are confined beyond the period permitted by the Twenty-eight Hour Law the carrier is liable to the penalty thereby prescribed. It can not be contended that such failure was an “accidental or unavoidable” cause which could not have been anticipated or avoided by the exercise of due care and foresight.

*U. S. v. Atlantic Coast Line R. Co.*, 173 Fed. 764. (C. C. A. 1909.) Circular No. 21, Office of the Solicitor, Department of Agriculture.

*b.* Great and unusual press of business, unexplained and of itself, is not an accidental or unavoidable cause which could not be anticipated or avoided by the exercise of due diligence and foresight within the meaning of section 1 of the act.

*U. S. v. Union Pacific R. Co.*, 169 Fed. 65. (C. C. A. 1909.) Circular No. 14, Office of the Solicitor, Department of Agriculture.

*c.* Failure to provide unloading stations, congested traffic conditions reasonably to be anticipated from past experiences, and breakdowns en route, resulting from negligent operation or omission to furnish properly equipped and inspected engines and cars, are not *accidents or unavoidable causes* which can not be anticipated and avoided by due diligence and foresight.

*U. S. v. Atchison, Topeka & Santa Fe R. Co.*, 166 Fed. 160 (1908). Circular No. 4, Office of the Solicitor, Department of Agriculture.

*d.* To avail itself of a breakdown or wreck as an excuse for non-compliance with the statute, the carrier must show that the circumstances relied upon resulted from a cause which could not have been avoided by the exercise of due diligence and foresight.

*U. S. v. Atchison, Topeka & Santa Fe R. Co.*, 166 Fed. 160 (1908). Circular No. 4, Office of the Solicitor, Department of Agriculture.

*e.* Drunkenness of an employee of the defendant company and resulting failure to perform his duty is not such an accidental cause within the meaning of the statute as will excuse noncompliance with its terms.

*U. S. v. Fort Worth Belt R. Co.* (1908). Circular No. 11, Office of the Solicitor, Department of Agriculture.

*f.* It is not an excuse under the Twenty-eight Hour Law for the railroad company to say that "we put our telegraphic service to work and got the men, but the men called went to sleep and we didn't know where to find them."

*U. S. v. Colorado & Southern R. Co.* (1908). Circular No. 7, Office of the Solicitor, Department of Agriculture.

*g.* A complaint to recover penalties under the statute is not defective for failure to allege that unloading was not prevented by storm or by other accidental or unavoidable causes, which could not be anticipated or avoided by the exercise of due diligence and foresight.

*U. S. v. Oregon Short Line R. Co.*, 160 Fed. 526 (1908). Circular No. 6, Office of the Solicitor, Department of Agriculture.

*h.* In a complaint to recover penalties under the twenty-eight hour law, an allegation that the defendant acted willfully is equivalent to an allegation that failure to unload within the prescribed time was not due to storm or other accidental or unavoidable causes.

*U. S. v. Oregon Short Line R. Co.*, 160 Fed. 526 (1908). Circular No. 6, Office of the Solicitor, Department of Agriculture.

*i.* If the confinement of stock for a longer period than the statutory time results from an accident caused by the negligence of the company transporting the stock, the transportation company is liable under the statute.

*U. S. v. Southern Pacific Co.*, 157 Fed. 459 (1907). Circular (unnumbered), Office of the Solicitor, Department of Agriculture.



*j.* Mere press of business is no excuse for confining stock for a longer period than the time allowed by law.

*U. S. v. Southern Pacific Co.*, 157 Fed. 459 (1907). Circular (unnumbered), Office of the Solicitor, Department of Agriculture.

*k.* Sidetracking to allow passenger trains or fast freight trains the right of way is no excuse or defense for the violation of the law, if the meeting of such trains could have been anticipated at the time the stock train was dispatched from its loading point.

*U. S. v. Southern Pacific Co.*, 157 Fed. 459 (1907). Circular (unnumbered), Office of the Solicitor, Department of Agriculture.

*l.* Where a connecting carrier was informed by telegraph that certain cars of live stock were in transit, but such information was not received in time to enable the unloading of the live stock at another place where there were facilities for so doing, and the evidence showed that the conditions at the stockyards at the arrival of the cars were extraordinary, a situation was presented which was beyond the carrier's control and the carrier was without sufficient warning of the arrival of the live stock from different localities over different roads to enable it to provide additional facilities; the failure, therefore, to comply with the law was due to unavoidable causes.

*U. S. v. New York Central & H. R. R. Co.* (1911). Circular No. 62, Office of the Solicitor, Department of Agriculture.

*m.* An accidental or unavoidable cause which can not be avoided by the exercise of due diligence and foresight within the meaning of this law is a cause which reasonably prudent and cautious men under like circumstances do not and would not ordinarily anticipate and whose effects under similar circumstances they do not and would not ordinarily avoid.

*Chicago, Burlington & Quincy Ry. Co. v. U. S.*, 194 Fed. 342. (C. C. A. 1912.) Circular No. 63, Office of the Solicitor, Department of Agriculture.

*n.* \* To avail itself of the excuse of storm, the carrier must show not only the fact of a storm, but that with due care he was prevented, as an unavoidable result of the storm, from complying with the law. No other accidental causes would be an excuse, unless the cause and effect are likewise unavoidable.

*Newport News & Mississippi Valley Co. v. U. S.*, 61 Fed. 488 (1894).

### "SHEEP."

*a.* The proviso of the statute "that it shall not be required that sheep be unloaded in the nighttime, but where the time expires in the nighttime, in case of sheep, the same may be continued in transit to a suitable place for unloading, subject to the aforesaid limitation of thirty-six hours," is not fatally defective for uncertainty, the meaning being that in case of sheep, if the twenty-eight hour limit expires at night, the transit may be continued to a suitable place for unloading, without the consent of the owner or custodian, except that in no case shall the thirty-six hour limit be exceeded.

*Southern Pacific Co. v. U. S.*, 171 Fed. 360. (C. C. A. 1909.) Circular No. 23, Office of the Solicitor, Department of Agriculture.



*b.* In the case of sheep, when the twenty-eight hour limit expires in the night, the carrier may continue them without unloading until the expiration of thirty-six hours.

U. S. *v.* Colorado & Southern R. Co. (1908). Circular No. 7, Office of the Solicitor, Department of Agriculture.

*c.* The statute authorizes carriers to continue the confinement of sheep up to thirty-six hours, but no longer than thirty-six hours, even without the shipper's request, when the twenty-eight hour period expires in the nighttime. It is the duty of the carrier to unload the sheep on the preceding day if the thirty-six hour limit will expire in the nighttime; at the expiration of the thirty-six hours sheep must be unloaded, even in the nighttime.

U. S. *v.* Atchison, Topeka & Santa Fe R. Co., 166 Fed. 160 (1908). Circular No. 4, Office of the Solicitor, Department of Agriculture.

*d.* The limit of time prescribed for the confinement of all animals, except sheep, is twenty-eight hours, except that when there is a written request for an extension of time they may be confined for thirty-six hours. In the transportation of sheep, if the twenty-eight-hour limit expires in the nighttime, the sheep may be continued in transit to a suitable place for unloading, up to thirty-six hours, without request, but not to exceed the limit of thirty-six hours, even if a request to so exceed the latter limit be made by the owner or shipper. When the limitation of thirty-six hours will expire in the nighttime, it is the duty of the carrier to unload the shipment of sheep before dark.

U. S. *v.* Southern Pacific Co., 157 Fed. 459 (1907). Circular (unnumbered), Office of the Solicitor, Department of Agriculture.

*e.* If there has been no extension of time by the owner or person in charge the carrier must unload the sheep within twenty-eight hours unless such twenty-eight-hour period expires in the nighttime, when the transit may be continued to a suitable place for unloading, provided such suitable place for unloading can be reached, and the unloading commenced, within thirty-six hours, it being the clear intention and purpose of the act that under no circumstances shall animals, including sheep, be kept in confinement by the carrier without unloading for rest, feed, and water longer than thirty-six hours, except as stated in case of storm or accidents. Thus it clearly appears that the period of time referred to as expiring in the nighttime has reference to the twenty-eight-hour period, and not to the extended period of thirty-six hours.

U. S. *v.* Atchison, Topeka & Santa Fe Ry. Co., 185 Fed. 105. (C. C. A. 1911.)

*f.* The only effect of the proviso in regard to sheep is this: It protects the carrier against unloading sheep in the nighttime to the extent of extending the period of confinement from twenty-eight hours to thirty-six hours, as a matter of law, and without any written consent on the part of the shipper. In no case, however, does it extend the time for which sheep may be confined beyond the limit of thirty-six hours. The phrase "subject to the aforesaid limitation of thirty-six hours" goes back to all the previous language of the proviso, and thus limits the words "it shall not be required that sheep be unloaded in the nighttime." The result of the proviso is that the carrier is not required to unload sheep in the nighttime if he can in daylight commence unloading them within the thirty-six hour limit and steadily

carry forward that work to completion. But if he can not do this, then the night is no protection to him, and it is his duty to comply with the requirements of the statute before the night comes on. He must also take notice of the fact that sheep can not be unloaded in the nighttime.

*U. S. v. Northern Pac. Ry. Co.*, unreported (1914). Circular No. 77, Office of the Solicitor, Department of Agriculture.

#### "IN THE NIGHTTIME."

The words "in the nighttime" mean that period of time between the termination of daylight in the evening of one day and the earliest dawn of the next morning.

*U. S. v. Southern Pacific Co.*, 157 Fed. 459 (1907). Circular (unnumbered), Office of the Solicitor, Department of Agriculture.

#### UNLOADING FOR REST, WATER, AND FEEDING.

*See also* Appendix.

*a.* A declaration alleging that the defendant failed to unload the cattle "for rest, water, or feeding" is not open to objection on the ground alleged by the defendant that it would be sufficient if the cattle were unloaded for any purpose.

*U. S. v. New York Central & Hudson River R. Co.*, 165 Fed. 833. (C. C. A. 1908.) Circular No. 15, Office of the Solicitor, Department of Agriculture.

*b.* It is the duty of the carrier having possession of the cattle when the twenty-eight hour limit is reached to unload the animals for food, water, and rest.

*U. S. v. Oregon Short Line R. Co.*, 160 Fed. 526 (1908). Circular No. 6, Office of the Solicitor, Department of Agriculture.

*c.* The statute places the duty of feeding the cattle upon the carrier which transports them to their destination and not upon independent companies which merely receive the live stock simply to give them food, water, and rest, at their stockyards, and then to surrender them to the carrier for a continuance of the journey. If an independent company has actual knowledge of the confinement in cars beyond the time limited and fails to use due diligence in unloading the live stock it would doubtless be liable for its disregard of the law.

*U. S. v. New York Central & Hudson River R. R. Co.* (1911). Circular No. 62, Office of the Solicitor, Department of Agriculture.

*d.* Where horses are confined by the initial carrier beyond the statutory period without feeding and they are then delivered to the connecting carrier for transportation to the stockyards, and the connecting carrier confines them for a period of three hours and thirty-five minutes before unloading and feeding them, the evident delay in taking them to the stockyards, a distance of seven miles, resulted in increased cruelty for which the connecting carrier incurred the penalty of the law.

*U. S. v. New York Central & Hudson R. R. Co.* (1911). Circular No. 62, Office of the Solicitor, Department of Agriculture. Affirmed 203 Fed. 953. (C. C. A. 1913.) Circular No. 73, Office of the Solicitor, Department of Agriculture.



*e.* Where a terminal carrier hauled stock with all due diligence on its tracks, which was the only available and quickest route to the stockyards, such stockyards being the only available place for unloading, the terminal company, in transporting stock under such circumstances, did not violate the law, but in so doing it placed the most humane and reasonable construction upon the statute. If the terminal carrier had done otherwise under the circumstances it would have been guilty of inflicting further suffering upon dumb animals, and it would have sacrificed the spirit of the act for the letter.

St. Louis Merchants Bridge Term. Ry. Co. v. U. S., 209 Fed. 600. (C. C. A. 1913.)

*f.* \*It is immaterial, in an action to recover a penalty under the statute, whether failure to *feed and water* the stock is due to the default of the shipper or the carrier. The act requires the shipper to feed and water the stock in the first instance, but if he fails the carrier must do it for him.

U. S. v. Louisville & Nashville R. Co., 18 Fed. 480 (1883).

#### “PROPERLY EQUIPPED PENS.”

*a.* A railway company which voluntarily unloads cattle for rest, water, and feeding into pens which are not properly equipped for the purpose knowingly and willfully violates the law.

U. S. v. Southern Pacific Co. (1909). Circular No. 20, Office of the Solicitor, Department of Agriculture.

*b.* Whether a pen is “properly equipped” within the meaning of the Twenty-eight Hour Law is a question of fact to be determined by the jury from the testimony offered in each case.

U. S. v. Southern Pacific Co. (1909). Circular No. 20, Office of the Solicitor, Department of Agriculture.

*c.* It is assumed, but not decided, that the statute prohibits not merely the confinement of cattle beyond the prescribed period without rest, water, or food, but also unloading them into pens not properly equipped for rest, water, and feeding.

St. Louis & San Francisco R. Co. v. U. S., 169 Fed. 69. (C. C. A. 1909.) Circular No. 17, Office of the Solicitor, Department of Agriculture.

*d.* It is the duty of a carrier engaged in the interstate transportation of animals to provide a sufficient number of suitably equipped corrals or stockyards at which to unload stock, and in which said stock may have suitable care, food, water, and rest.

U. S. v. Southern Pacific Co., 157 Fed. 459 (1907). Circular (unnumbered), Office of the Solicitor, Department of Agriculture.

*e.* The Twenty-eight Hour Law does not require a carrier to maintain any particular kind of equipment of its stock pens, permanent or otherwise, except in so far as to render them suitable for the humane purpose of properly feeding, watering, and resting the particular shipment of stock unloaded into them.

U. S. v. St. Louis. Iron Mountain & Southern Ry. Co., 177 Fed. 205. (C. C. A. 1910.)



## UNIT OF VIOLATION.

*a.* A single penalty is incurred for confining live stock beyond the period of twenty-eight or thirty-six hours, and the time of its confinement beyond that period is not material, unless it shall be for another period of twenty-eight or thirty-six hours, when it might be claimed that another penalty had been incurred.

*U. S. v. Sioux City Stock Yards Co.*, 162 Fed. 556 (1908).

*b.* The time of confinement of a shipment of stock is to be reckoned from the completion of the loading at any given point to the commencement of the unloading of the stock at the next point along the route; and there are as many violations of the law as the periods of confinement between loading and the next unloading are in excess of the statutory time prescribed for such confinement between the point of original departure and the final destination of the shipment, even though they relate to the same stock or the same train.

*U. S. v. Southern Pacific Co.*, 157 Fed. 459 (1907). Circular (unnumbered), Office of the Solicitor, Department of Agriculture.

*c.* Regardless of the number of shipments or of trains or cars, offenses are separately punishable for every failure to comply with the provisions of the Twenty-eight Hour Law by confining animals longer than the prescribed time, and there is a separate offense as to each lot of animals shipped simultaneously as the period expires as to each lot. The violations are to be measured by the time and place when and where the duty is to be performed.

*The Baltimore & Ohio Southwestern R. R. Co. v. U. S.*, 220 U. S. 94 (1911). Circular No. 46, Office of the Solicitor, Department of Agriculture.

*d.* Where two cars, though loaded at different points, were consolidated into one train and were subsequently delivered to the connecting carrier at the same time, and the consignors and consignees were the same in both cases and the destinations of the animals the same, there was practically but one offense, and the slight difference in the time when the lawful period expired is insignificant and, giving the statute a reasonable construction, may be disregarded.

*U. S. v. New York Central & Hudson R. R. Co.*, 191 Fed. 938, 940 (1911).

*e.* \* Confinement of a trainload of cattle for a longer period than twenty-eight hours without unloading, when the cars constituted one train and all the cattle were shipped by the same consignor to the same consignee at the same time, is a single offense. The unlawful confinement of each carload can not be held to constitute a separate offense when the different cars make one train and the shipment of cattle is one shipment.

*U. S. v. St. Louis & San Francisco R. Co.*, 107 Fed. 870 (1901).

*f.* \* The unlawful confinement of each animal in a trainload can not be held to constitute a separate offense. The amount of the penalty assessed must be within the limits fixed by the statute (secs. 4386-4390 R. S.), that is, "not less than one hundred nor more than five hundred dollars."

*U. S. v. Boston & Albany R. Co.*, 15 Fed. 209 (1883).

### ASSESSMENT OF THE PENALTY.

*a.* The statute does not definitely fix the penalty, but prescribes for each violation a sum of not less than one hundred nor more than five hundred dollars. Determination of the amount which may be assessed in a particular case is a matter of discretion to be exercised by the trial court.

*U. S. v. Atlantic Coast Line R. Co.* (C. C. A. 1909.) Circular No. 21, Office of the Solicitor, Department of Agriculture.

*b.* In an action to recover a penalty under the Twenty-eight Hour Law, if the verdict is found against the defendant it is necessary for the jury to assess the penalty within the limits prescribed by the statute.

*U. S. v. Southern Pacific Co.* (1909). Circular No. 20, Office of the Solicitor, Department of Agriculture.

*c.* It is for the jury, if its verdict is for the United States, to assess the penalty within the limits prescribed by the statute.

*U. S. v. Fort Worth Belt Ry. Co.* (1903). Circular No. 11, Office of the Solicitor, Department of Agriculture.

*d.* In an action to recover a penalty under the statute, it is for the jury to determine the facts and, if the verdict is against the defendant, to assess the penalty under the limits prescribed in the law.

*U. S. v. Colorado & Southern Ry. Co.* (1908). Circular No. 7, Office of the Solicitor, Department of Agriculture.

*e.* After verdict in favor of the Government the duty of fixing the amount of the penalty devolves upon the court.

*U. S. v. Southern Pacific Co.*, 162 Fed. 412 (1908). Circular No. 9, Office of the Solicitor, Department of Agriculture.

*f.* Whether the law has been violated is a question of fact to be determined by the jury, and, if the verdict is in favor of the United States and against the defendant, it is for the court to determine the amount of the penalty within the limits of the statute.

*U. S. v. Southern Pacific Co.*, 157 Fed. 459 (1907). Circular (unnumbered), Office of the Solicitor, Department of Agriculture.

*g.* It is the duty of the court to fix the amount of the recovery.

*Atchison, Topeka & Santa Fe Ry. Co. v. U. S.*, 178 Fed. 12 (C. C. A. 1910). Circular No. 36, Office of the Solicitor; *Missouri, Kansas & Texas Ry. Co. v. U. S.*, 178 Fed. 15 (C. C. A. 1910), Circular No. 37, Office of the Solicitor, Department of Agriculture.

*h.* \* After verdict for the plaintiff, the amount of the penalty is to be determined by the court within the limits prescribed by the statute (secs. 4386-4390 R. S.).

*U. S. v. Boston & Albany R. Co.*, 15 Fed. 209 (1883).

*i.* \* The plaintiff can sue only for the penalty prescribed by the statute (secs. 4386-4390 R. S.).

*U. S. v. Boston & Albany R. Co.*, 15 Fed. 209 (1883).

### EVIDENCE.

#### BURDEN OF PROOF.

*a.* The burden is on the Government to establish by a preponderance of the evidence the acts charged as constituting a violation of the Twenty-eight Hour Law.

*U. S. v. Southern Pacific Co.* (1909). Circular No. 20, Office of the Solicitor, Department of Agriculture.



*b.* The statute provides a penalty to be recovered *by civil action*. It must be presumed that the usual incidents of all civil actions attach, one of which is that proof by a *reasonable preponderance of the evidence* is sufficient.

U. S. *v.* Southern Pacific Co., 162 Fed. 412 (1908). Circular No. 9, Office of the Solicitor, Department of Agriculture.

*c.* A suit under the statute is to be regarded as merely a *civil proceeding*, so far as the ordinary rules of pleading and proof are concerned. The United States are bound to support their case by only a preponderance of the evidence.

U. S. *v.* New York Central & Hudson River R. Co., 165 Fed. 833. (C. C. A. 1908.) Circular No. 15, Office of the Solicitor, Department of Agriculture.

*d.* The burden is on the defendant to prove "other accidental or unavoidable causes."

U. S. *v.* New York Central & Hudson River R. Co., 165 Fed. 833. (C. C. A. 1908.) Circular No. 15, Office of the Solicitor, Department of Agriculture.

*e.* The burden is on the Government to prove its charge against the defendant by a preponderance or greater weight of the evidence, but not beyond a reasonable doubt.

U. S. *v.* Fort Worth Belt R. Co. (1908). Circular No. 11, Office of the Solicitor, Department of Agriculture.

*f.* A suit under the Twenty-eight Hour Law is not a criminal case and the Government is not held to proof beyond a reasonable doubt, but by a preponderance or greater weight of the evidence.

U. S. *v.* Colorado & Southern R. Co. (1908). Circular No. 7, Office of the Solicitor, Department of Agriculture.

*g.* The burden of proof is not on the Government to show that the defendant was not prevented from unloading within the time prescribed, by storm or other accidental or unavoidable cause.

U. S. *v.* Oregon Short Line R. Co., 160 Fed. 526 (1908). Circular No. 6, Office of the Solicitor, Department of Agriculture.

*h.* The Government is not required to establish the acts constituting a violation of the statute beyond all reasonable doubt, but simply *by a preponderance of the evidence*.

U. S. *v.* Southern Pacific Co., 157 Fed. 459 (1907). Circular (unnumbered), Office of the Solicitor, Department of Agriculture.

*i.* The burden of proof is on the United States to establish every fact constituting an offense under the statute *to the exclusion of a reasonable doubt*.

U. S. *v.* Louisville & Nashville R. Co., 157 Fed. 979 (1907).

*j.* A suit under the Twenty-eight Hour Law is a civil action, and a preponderance of the evidence in favor of the Government is sufficient to warrant a verdict against the defendant.

Atchison, Topeka & Santa Fe Ry. Co. *v.* U. S., 178 Fed. 12 (C. C. A. 1910), Circular No. 36, Office of the Solicitor; Missouri, Kansas & Texas Ry. Co. *v.* U. S., 178 Fed. 15 (C. C. A. 1910), Circular No. 37, Office of the Solicitor, Department of Agriculture.

*k.* It is not enough to show that the animals "can" have such supplies, as, for instance, that the one in charge may procure water and food at the stations where stops are made, but it must be shown



that the animals "do" have proper food, water, space, and opportunity to rest in the cars, boats, or other vessels where carried.

*U. S. v. Chicago, Burlington & Quincy R. R. Co.*, 184 Fed. 984 (1910). Circular No. 42, Office of the Solicitor, Department of Agriculture.

*l.* It is not indispensable to a recovery of a penalty under this statute that the Government should negative the excuse embodied in the proviso. That excuse is a separate topic, a defense, and the burden is on the defendant to establish it.

*Chicago, Burlington & Quincy R. R. Co. v. U. S.*, 195 Fed. 241. (C. C. A. 1912.) Circular No. 64, Office of the Solicitor, Department of Agriculture.

*m.* Where the defendant carrier received certain horses from its connecting carrier, which had kept them confined for a period longer than is allowed by the statute, and continued their transportation to destination without unloading, knowledge of the connecting carrier's default would be imputed to defendant in the absence of evidence from it that it had made reasonable inquiry and could not ascertain the fact.

*New York Central & Hudson R. R. Co. v. U. S.*, 203 Fed. 953. (C. C. A. 1913.) Circular No. 73, Office of the Solicitor, Department of Agriculture.

*n.* When a connecting railroad company receives a car of cattle in interstate commerce or movement knowing that the cattle have been confined without rest, food, or water for more than the statutory time, and such cattle are not promptly unloaded by such receiving company, and prima facie the delay in unloading appears unreasonable and unnecessary, the burden is on such receiving company to excuse the delay by showing storm, accident, or some unavoidable cause which could not have been anticipated or avoided by the exercise of due diligence and foresight.

*U. S. v. Delaware, L. & W. R. Co.*, 206 Fed. 513 (1913).

#### PRESUMPTIONS.

*o.* There is no presumption that cattle which have been transported by preceding carriers for twenty-eight or thirty-six hours have not been unloaded, fed, and watered within the required time. The presumption is that the preceding carrier had performed its duty under the law.

*U. S. v. Sioux City Stock Yards Co.*, 162 Fed. 556 (1908).

*p.* There is no presumption in a prosecution under the statute, either of law or fact, that cattle have not been taken out, rested, watered, and fed by the owner or previous carrier, nor that the last carrier has received information of how long the cattle have been confined, nor how they have been treated. The burden is on the Government to establish these facts affirmatively beyond reasonable doubt.

*U. S. v. Louisville & Nashville R. Co.*, 157 Fed. 979 (1907).

#### RULE OF CONSTRUCTION.

*a.* The maxims and rules of interpretation require that we have regard to all provisions of the statute, and, if possible, attribute to

the language of each a meaning which will permit other provisions to have their due effect.

*U. S. v. Baltimore & Ohio Southwestern R. Co.*, 159 Fed. 33. (C. C. A. 1908.) Circular No. 3, Office of the Solicitor, Department of Agriculture.

*b.* A suit to recover a penalty under the Twenty-eight Hour Law is treated as being a civil proceeding.

*U. S. v. Atlantic Coast Line R. Co.*, 173 Fed. 764. (C. C. A. 1909.) Circular No. 21, Office of the Solicitor, Department of Agriculture.

*c.* An action to recover a penalty under the Twenty-eight Hour Law is civil in form, although undoubtedly criminal in its nature.

*U. S. v. Chicago & North Western R. Co.* (1908). Circular No. 5, Office of the Solicitor, Department of Agriculture.

*d.* In determining the jurisdiction of the court, or, in other words, the venue, an action to recover a penalty under the Twenty-eight Hour Law is to be regarded as a civil action.

*U. S. v. Chicago & North Western R. Co.* (1908). Circular No. 5, Office of the Solicitor, Department of Agriculture.

*e.* Actions under the Twenty-eight Hour Law are civil actions.

*U. S. v. Southern Pacific Co.*, 162 Fed. 412 (1908). Circular No. 9, Office of the Solicitor, Department of Agriculture.

*Southern Pacific Co. v. U. S.*, 171 Fed. 364. (C. C. A. 1909). Circular No. 24, Office of the Solicitor, Department of Agriculture.

*f.* An action to recover the penalty prescribed by the statute partakes of the ordinary incidents of a civil action, and is subject to the rules of construction and of evidence which are applied in civil actions.

*Montana Central R. Co. v. U. S.*, 164 Fed. 400. (C. C. A. 1908.) Circular No. 12, Office of the Solicitor, Department of Agriculture.

*g.* The statute is penal and is not to be extended beyond the fair meaning of the language employed.

*U. S. v. Baltimore & Ohio Southwestern R. Co.*, 159 Fed. 33. (C. C. A. 1908.) Circular No. 3, Office of the Solicitor, Department of Agriculture.

*h.* The statute is penal and criminal and must be strictly construed, but not so strictly as to defeat the intention. The rule of construction is not changed because Congress has provided that proceedings for the enforcement of the statute shall take the form of civil suits.

*U. S. v. Louisville & Nashville R. Co.*, 157 Fed. 979 (1907).

*i.* An action by the United States to recover from a carrier the penalty imposed by the Twenty-eight Hour Law is a civil action, with all the ordinary incidents thereof, including liability of the defeated party for costs.

*U. S. v. Southern Pacific Co.*, 172 Fed. 909 (1909). Circular No. 28, Office of the Solicitor, Department of Agriculture.

*j.* A suit under the Twenty-eight Hour Law is a civil action and a preponderance of the evidence in favor of the Government is sufficient to warrant a verdict against the defendant.

*Atchison, Topeka & Santa Fe Ry. Co. v. U. S.*, 178 Fed. 12 (C. C. A. 1910); *Missouri, Kansas & Texas Ry. Co. v. U. S.*, 178 Fed. 15 (C. C. A. 1910). Circulars Nos. 36 and 37, Office of the Solicitor, Department of Agriculture.



*k.* The penalty of section 3 can, as expressly provided, be only applied when the carrier has failed to comply with the provisions of both sections 1 and 2; that is, the carrier must have confined the animals in cars, boats, or vessels for a period longer than twenty-eight consecutive hours without unloading the same into pens for rest, water, and feeding, and it must also have failed to properly feed and water the animals so unloaded during such period of rest.

U. S. *v.* Lehigh Valley R. R. Co. (1912). Circular No. 65, Office of the Solicitor, Department of Agriculture.

*l.* The statute under which this action is brought is penal, and must be strictly construed.

U. S. *v.* Lehigh Valley R. R. Co. (1912). Circular No. 65, Office of the Solicitor, Department of Agriculture.

*m.* It seems too plain for argument that no offense is created by this statute which does not contain as one of its elements the confinement of the animals being transported in the cars, boats, or vessels of the carrier for a period longer than twenty-eight *consecutive* hours without unloading for feed, water, and rest.

U. S. *v.* Lehigh Valley R. R. Co. (1912). Circular No. 65, Office of the Solicitor, Department of Agriculture.

NOTE.—This case was affirmed (204 Fed. 705), but on the ground that the facts failed to show a knowing and willful violation of the statute.

*n.* \*The statute (secs. 4386–4390 R. S.) is highly penal, and must be construed as strictly as if it were a statute creating a criminal offense. Nothing can be imported by construction which is not within its spirit and letter.

U. S. *v.* St. Louis & San Francisco R. Co., 107 Fed. 870 (1901).

### THIRTY-SIX HOUR REQUEST.

*a.* Under the statute the shipper or person in charge of the stock can not by consent or agreement relieve the company from the penalties imposed therein. He may, however, authorize the carrier to extend the period of confinement from twenty-eight to thirty-six hours.

U. S. *v.* Southern Pacific Co. (1909). Circular No. 20, Office of the Solicitor, Department of Agriculture.

*b.* The statute can not be so construed as to permit the owner of live stock to file a general request with the railroad company, applicable to all his shipments in the future, with a view to extending the time of confinement of all shipments from twenty-eight to thirty-six hours. Such a construction would nullify the general intent of Congress to limit the time of confinement to twenty-eight hours. There should be a separate written request for each particular shipment.

U. S. *v.* Pere Marquette R. Co., 171 Fed. 586 (1909). Circular No. 19, Office of the Solicitor, Department of Agriculture.

*c.* A legal request for the confinement of live stock under section 1 of the statute may be made (1) by the authorized agent of the owner of the particular shipment; (2) such a request may be printed, engraved, or stamped and partly in handwriting; (3) a legal request may be made on or in a railroad form separate and apart from a

printed bill of lading or other railroad form than one which contains the request alone; (4) such a request may be made before the transportation of the shipment commences; (5) such a request may be made, although it is not induced by any emergency or contingency that arises after the transportation commences and that was unforeseen at that time.

*Wabash R. R. Co. v. U. S.*, 178 Fed. 5 (C. C. A. 1910), Circular No. 35, Office of the Solicitor; *Atchison, Topeka & Santa Fe Ry. Co. v. U. S.*, 178 Fed. 12 (C. C. A. 1910), Circular No. 36, Office of the Solicitor; *Missouri, Kansas & Texas Ry. Co. v. U. S.*, 178 Fed. 15 (C. C. A. 1910), Circular No. 37, Office of the Solicitor, Department of Agriculture.

*d.* If there has been no extension of time by the owner or person in charge the carrier must unload the sheep within twenty-eight hours, unless such twenty-eight-hour period expires in the nighttime, when the transit may be continued to a suitable place for unloading, provided such suitable place for unloading can be reached and the unloading commenced within thirty-six hours, it being the clear intention and purpose of the act that under no circumstances shall animals, including sheep, be kept in confinement by the carrier without unloading for rest, feed, and water longer than thirty-six hours, except as stated in case of storm or accidents. Thus it clearly appears that the period of time referred to as expiring in the nighttime has reference to the twenty-eight-hour period and not to the extended period of thirty-six hours.

*U. S. v. Atchison, Topeka & Santa Fe Ry. Co.*, 185 Fed. 105. (C. C. A. 1911.)

*e.* If a shipper's written request should be made upon the margin or back of a paper containing a form of a daily report to the auditor, or form of a letterhead, the humanitarian purpose of the act would not be less subserved than by having the request written upon a virgin sheet. A construction that leads to futility or absurdity should be avoided if possible. The wording of the act very clearly requires the separateness of the request as a request, and not the separateness of the paper or material on which the request is written.

*Mobile & O. R. Co. v. U. S.*, 209 Fed. 605. (C. C. A. 1913.)

### DEFENSES.

*a.* Delivery of animals by a carrier to the consignee within the limit of time prescribed by the statute is sufficient to relieve the defendant from further responsibility under the act.

*U. S. v. Southern Pacific Co.*, 157 Fed. 459 (1907). Circular (unnumbered), Office of the Solicitor, Department of Agriculture.

*b.* Delivery of animals by the defendant to a connecting carrier within the limit of time prescribed by the statute is sufficient to relieve the defendant from further responsibility.

*U. S. v. Southern Pacific Co.*, 157 Fed. 459 (1907). Circular (unnumbered), Office of the Solicitor, Department of Agriculture.

*c.* Circumstances which release the carrier from liability under the statute are provided therein; the court and jury have no right to find exceptions outside the statute.

*U. S. v. Colorado & Southern R. Co.* (1908). Circular No. 7, Office of the Solicitor, Department of Agriculture.



*d.* It is no defense to a charge that a railroad company or a common carrier in transporting animals has confined them knowingly and willfully more than twenty-eight hours without unloading them in violation of the act of June 29, 1906, that another carrier that participated in the transportation of the same shipment was also guilty of a violation of the statute and has forfeited and paid the penalty therefor.

*U. S. v. Northern Pac. Term. Co.*, 181 Fed. 879 (1909). Circular No. 30, Office of the Solicitor, Department of Agriculture. *U. S. v. Wabash R. R. Co.*, 182 Fed. 802. (C. C. A. 1910.) Circular No. 43, Office of the Solicitor, Department of Agriculture.

*e.* It is no defense, in an action against a connecting carrier, to say that the initial carrier, which had itself violated the law on the same shipment, had been fined therefor.

*U. S. v. Northern Pacific Terminal Co.*, 186 Fed. 947 (1911). Circular No. 53, Office of the Solicitor, Department of Agriculture.

*f.* If judgment has been recovered against the initial carrier for violation of the statute, such recovery is not a bar to an action against the connecting carrier, which has knowledge of the length of time the animals have been confined without rest, water, and food, and the latter is not relieved from complying with the statute on the ground that the preceding carrier first violated its provisions and paid the penalty provided by the statute, even though a new period equal to the statutory time has not expired.

*U. S. v. New York Central & Hudson R. R. Co.* (1911). Circular No. 62, Office of the Solicitor, Department of Agriculture. Affirmed, 203 Fed. 953. (C. C. A. 1913.) Circular No. 73, Office of the Solicitor, Department of Agriculture.

*g.* If a connecting carrier is misled by the agent of the preceding carrier, and thereby unavoidably keeps stock confined beyond the lawful time, such fact, if it amounts to a defense, must be pleaded.

*Oregon-Wash. R. & Nav. Co. v. U. S.*, 205 Fed. 343. (C. C. A. 1913.)

*h.* \*A carrier with which the contract for shipment of live stock is made and which of itself does not confine the animals beyond the period prescribed is not liable for the penalty imposed by sec. 4388, R. S., because connecting carriers violated the law after the stock had passed out of the control of the first carrier.

*U. S. v. Louisville & Nashville R. Co.*, 18 Fed. 480 (1883).

#### DEPOSITIONS.

\*The plaintiff may follow the State practice in taking depositions.

*U. S. v. Louisville & Nashville R. Co.*, 18 Fed. 480 (1883).

#### SPACE IN CARS.

*a.* The evidence is uncontradicted that cattle under transportation ought to have at least 2½ feet of space for each animal. That is the space required by the United States statute relating to shipment of cattle at sea, and obviously it seems a small enough space to be occupied by cattle anywhere.

*U. S. v. New York Central & Hudson River R. R. Co.*, 186 Fed. 541 (1911). Circular No. 48, Office of the Solicitor, Department of Agriculture.

b. When cars are not unloaded all the animals contained therein must have sufficient space for lying down at the same time. The probabilities are that they will not all lie at the same time, but, nevertheless, opportunity must be given them to do so.

U. S. v. New York Central & Hudson River R. R. Co., 191 Fed. 938 (1911). Circular No. 60, Office of the Solicitor, Department of Agriculture.

c. The requirements of the statute providing for giving opportunity to rest are not unreasonable, and a fair construction requires that the space allowed each animal shall be such as to permit him to lie down ad libitum.

U. S. v. Erie R. R. Co., 191 Fed. 941 (1911). Circular No. 61, Office of the Solicitor, Department of Agriculture. Affirmed, 200 Fed. 406. (C. C. A. 1912.) Circular No. 67, Office of the Solicitor, Department of Agriculture.

#### DUE DILIGENCE AND FORESIGHT.

a. The measure of the diligence and foresight is that diligence and foresight which persons of ordinary prudence and care commonly exercise under similar circumstances.

Chicago, Burlington & Quincy Ry. Co. v. U. S., 194 Fed. 342. (C. C. A. 1912.) Circular No. 63, Office of the Solicitor, Department of Agriculture.

b. The servants of the defendant might have assumed that the car would be taken care of, but that was not enough. Being responsible for the unloading, they should have at least exercised due diligence and foresight in the premises, and the question whether they did or not was for the jury.

Oregon-Washington R. & Nav. Co. v. U. S., 205 Fed. 337, 340. (C. C. A. 1913.)

#### COSTS.

On a recovery by the Government in an action for violation of the statute, in the district of Oregon, a docket or attorney's fee of \$40 is taxable against the defendant, under the provisions of Rev. St., sections 824, 837.

U. S. v. Southern Pacific Co., 172 Fed. 909 (1909). Circular No. 28, Office of the Solicitor, Department of Agriculture.

#### WRITS OF ERROR.

a. When an action under the Twenty-eight Hour Law *in a district court*, triable by jury under section 566, R. S., is by consent of the parties tried to the court without a jury, no question of fact or law decided upon or in connection with the trial is subject to reexamination in an appellate court. Sections 649, 700, R. S., providing for waiving a jury and for the review of judgments rendered in causes when there is such waiver, relate exclusively to trials in circuit courts.

U. S. v. St. Louis, Iron Mountain & Southern R. Co., 169 Fed. 73. (C. C. A. 1909.)

b. The United States, as a matter of right, may have a writ of error to review a judgment rendered under the Twenty-eight Hour Law, for the action to recover a penalty under the law is civil.

U. S. v. New York, Chicago & St. Louis R. Co., 168 Fed. 699. (C. C. A. 1909.) Circular No. 16, Office of the Solicitor, Department of Agriculture.



*c.* In an action to recover a penalty under the Twenty-eight Hour Law the sufficiency of the facts found to support the judgment are not open to review in the Circuit Court of Appeals in the absence of a special finding in the defendant's favor. The special finding contemplated by sections 649, 700, R. S., is a specific statement of those ultimate facts on which the law must decide the rights of the parties. It corresponds to the special verdict of a jury, is equally specific and responsive to the issues, and is spread upon the record in like manner as is such a verdict. An opinion of the trial judge, setting forth the reasons for his decision in an action under the Twenty-eight Hour Law, tried by a circuit court without the intervention of a jury, can not be regarded as such special finding.

U. S. *v.* Sioux City Stock Yards Co., 167 Fed. 126. (C. C. A. 1909.)

*d.* Congress has provided that the remedy shall be by civil action, and, although the statute is penal, the Government is entitled to have a judgment in such action reversed by writ of error.

U. S. *v.* Baltimore & Ohio Southwestern R. Co., 159 Fed. 33. (C. C. A. 1908.) Circular No. 3, Office of the Solicitor, Department of Agriculture. *See also* Montana Central R. Co., 164 Fed. 400. Circular No. 12, Office of the Solicitor, Department of Agriculture.

## ANIMAL QUARANTINE LAW ANNOTATIONS.

### ACT OF MAY 29, 1884.

#### CONSTITUTIONALITY.

The act of May 29, 1884, is within the power given to Congress to regulate interstate commerce.

*U. S. v. Slater*, 123 Fed. 115 (1903).

#### PARTIES AMENABLE.

It is a misdemeanor, under the act of May 29, 1884, and punishment is provided therefor, for one to drive live stock from one State to another knowing them to have a contagious disease, though they are not driven from a district against which the Commissioner of Agriculture has declared a quarantine.

*U. S. v. Slater*, 123 Fed. 115 (1903).

#### RULES AND REGULATIONS.

*a.* An order of the Department of Agriculture issued under authority of the act of May 29, 1884, giving notice that scabies exists among sheep in the United States, and that it is a violation of law to receive for transportation, to transport, or to deliver for transportation from one State to another, any stock affected with such disease, or to drive from one State to another any sheep knowing them to be affected with such disease, is valid, though not specifying any particular district within which a quarantine has been established.

*U. S. v. Slater*, 123 Fed. 115 (1903).

*b.* In an information charging a violation of the act of May 29, 1884, it is not necessary to set out the rules and regulations of the Department of Agriculture; the court may take judicial notice of them.

*U. S. v. Slater*, 123 Fed. 115 (1903).

### ACT OF FEBRUARY 2, 1903.

#### DELEGATION OF POWERS.

The act of February 2, 1903, confers no power on the Secretary of Agriculture to make any regulations concerning intrastate commerce over which Congress has no control.

*Illinois Central R. R. Co. v. McKendree*, 203 U. S. 514 (1906).

#### RULES AND REGULATIONS.

*a.* While in a proper case Federal authorities may, under the act of February 2, 1903, adopt a quarantine line adopted by a State, where the Secretary of Agriculture makes regulations adopting it as



applying to all commerce whether interstate or intrastate, and nothing on the face of the order indicates whether he would have made such an order if limited to interstate commerce, the order is not divisible and the court can not declare that it relates solely to interstate commerce, but must declare it void as an entirety.

*Illinois Central R. R. Co. v. McKendree*, 203 U. S. 514 (1906).

*b.* An order of the Secretary of Agriculture, purporting to fix a quarantine line under the act of February 2, 1903, and applying in terms to all shipments, whether interstate or intrastate, is void, as an attempt to regulate intrastate commerce, notwithstanding it is the same line as that fixed for a similar purpose as to intrastate shipments by the State through which it passes.

*Illinois Central R. R. Co. v. McKendree*, 203 U. S. 514 (1906).

*c.* The provisions of orders of the Secretary of Agriculture, promulgated under authority of the act of February 2, 1903, establishing quarantine districts for cattle and regulations to be observed by carriers in the shipment of cattle from such districts, and which provide that "cattle from said area may be transported by boat or rail for immediate slaughter," subject to such regulation, have the force of law and are paramount with respect to interstate shipments.

*Chicago, Burlington & Q. R. Co. v. Fyre-Bruhn Co.*, 184 Fed. 15. (C. C. A. 1911.)

## ACT OF MARCH 3, 1905.

### CONSTITUTIONALITY.

The act of March 3, 1905, defines the unlawful act, declares it to be a crime, and fixes the punishment; and this is completely done by the public act itself, without resort to departmental regulations. The act does not attempt to vest in the Secretary of Agriculture the power to determine what facts shall constitute a crime, but permits him to determine the existence of a status to which the act itself attaches certain restrictions.

*U. S. v. Louisville & Nashville R. Co.*, 176 Fed. 942 (1910). Circular No. 34, Office of the Solicitor, Department of Agriculture.

### PURPOSE.

The purpose of the act of March 3, 1905, is to prevent the dissemination of contagious, infectious, or communicable diseases of live stock by prohibiting the interstate transportation from infected areas.

*U. S. v. Southern Ry. Co.*, 187 Fed. 209 (1911). Circular No. 50, Office of the Solicitor, Department of Agriculture.

### PARTIES AMENABLE.

*a.* The act of March 3, 1905, applies only to the initial carrier which transports stock from the quarantined district, and a connecting carrier, which receives the stock in another State or Territory for further transportation is not subject to punishment thereunder.

*U. S. v. El Paso & N. E. R. Co.*, 178 Fed. 846 (1910); *U. S. v. Chicago, B. & Q. R. Co.*, 181 Fed. 882 (1910); *St Louis Merchants' Bridge Term. Ry. Co. v. U. S.*, 188 Fed. 191. (C. C. A. 1911.)

b. The provisions of section 2 of the act of March 3, 1905, do not apply to the receipt of live stock by a connecting carrier for transportation wholly within the State in which it is received, even though the shipment originated at a quarantined point in another State.

U. S. *v.* Baltimore & Ohio Southwestern R. Co., 222 U. S. 8 (1911).

NOTE.—By an amendment approved March 4, 1913 (37 Stat. L. 828, 831), connecting carriers are made amenable to the statute.

#### DELEGATION OF POWERS.

A legislative body can not delegate its lawmaking power, its power to exercise the indispensable discretion to make, to add to, to take from, or to modify a statute. It can not delegate its power to add parties or acts to those punishable under a statute. The addition by regulation to the class of railroad companies and to the acts punishable under the quarantine act of March 3, 1905, other railroad companies and other acts was unauthorized and ineffective.

St. Louis Merchants' Bridge Term. Ry. Co. *v.* U. S., 188 Fed. 191. (C. C. A. 1911.)

#### NOTICE.

Section 1 of the act of March 3, 1905, requires the Secretary of Agriculture to give notice of the establishment of quarantine only to the "transportation companies doing business in or through" the quarantined State.

U. S. *v.* Baltimore & Ohio Southwestern R. Co., 222 U. S. 8 (1911).

#### "MAKE" AND "PROMULGATE."

a. The words "make" and "promulgate" in section 3 of the act of March 3, 1905, are not employed tautologically, but have a separate and distinct meaning, and the mere making of the regulations is not sufficient to give them binding force, but, in addition, they must be promulgated in the manner required by the act.

U. S. *v.* Louisville & Nashville R. Co., 165 Fed. 936 (1908). Circular No. 13, Office of the Solicitor, Department of Agriculture.

b. The "making" of rules and regulations by the Secretary of Agriculture, under section 3 of the act of March 3, 1905, is sufficiently accomplished by writing them and signing them officially, and their "promulgation" under this act is effected by the Secretary of Agriculture notifying the proper officers of railroads doing business in or through the quarantined State of the making of them and publishing notice thereof in such newspapers in the quarantined State as he may select.

U. S. *v.* Louisville & Nashville R. Co., 165 Fed. 936 (1908). Circular No. 13, Office of the Solicitor, Department of Agriculture.

#### RULES AND REGULATIONS.

a. The act of March 3, 1905, is not equivalent to a general prohibition against all shipments, accompanied by a general permission of such shipments upon compliance with departmental rules, the effect of which would be to create a crime out of a violation of departmental rules, to be afterwards promulgated; the act contains a gen-



eral prohibition, together with a limited and conditional exception, applicable as the Secretary of Agriculture may determine.

U. S. *v.* Louisville & Nashville R. Co., 176 Fed. 942 (1910). Circular No. 34, Office of the Solicitor, Department of Agriculture.

*b.* The regulations of the Secretary of Agriculture under section 3 of the act of March 3, 1905, are ineffective to add to the class of railroad companies or to the acts denounced by that statute.

St. Louis Merchants' Bridge Term. Ry. Co. *v.* U. S., 188 Fed. 191. (C. C. A. 1911.)

*c.* A legislative body may delegate to an executive or administrative officer the power to find some fact or situation on which the operation of a law is conditional, or to make and enforce regulations for the execution of a statute according to its terms. Such power was conferred upon the Secretary of Agriculture by the act of March 3, 1905.

St. Louis Merchants' Bridge Term. Ry. Co. *v.* U. S., 188 Fed. 191. (C. C. A. 1911.)

#### PLEADING.

*a.* In a prosecution based on the act of March 3, 1905, the indictment need not set out the rules and regulations of the Secretary of Agriculture in *haec verba*, but facts should be stated upon which the court can base a judgment as to the sufficiency of the allegation therein that the rules and regulations were "duly and legally" made and promulgated, for otherwise it may be that the indictment states only a legal conclusion.

U. S. *v.* Louisville & Nashville R. Co., 165 Fed. 936 (1908). Circular No. 13, Office of the Solicitor, Department of Agriculture.

*See also* "Make" and "Promulgate," *infra*.

*b.* In a prosecution based on the act of March 3, 1905, the indictment must allege facts showing that the rules and regulations of the Secretary of Agriculture have not only been "made" but that they have been "promulgated" in the manner required by section 3 of the act, the mere allegation that they were made and promulgated being insufficient.

U. S. *v.* Louisville & Nashville R. Co., 165 Fed. 936 (1908). Circular No. 13, Office of the Solicitor, Department of Agriculture.

*c.* The failure to placard the cars and to stamp the waybills, as required by the regulations of the Secretary of Agriculture made under authority of the act of March 3, 1905, are separate and distinct offenses.

U. S. *v.* Louisville & Nashville R. Co., 165 Fed. 936 (1908). Circular 13, Office of the Solicitor, Department of Agriculture.

*d.* In an indictment charging a railroad company with having transported live stock from a quarantined district into another State, in violation of the act of March 3, 1905, an allegation that the Secretary of Agriculture "duly and legally established" the quarantine is not sufficient, but it must further show that he published the notice required by section 1 of the act, which is prerequisite to a criminal conviction.

U. S. *v.* El Paso & N. E. R. Co., 178 Fed. 846 (1910).

*e.* In an indictment charging a railroad company with having transported live stock from a quarantined district into another State, in violation of the act of March 3, 1905, an allegation that the printed notice was given to the "proper officers" of the defendant is insufficient as alleging a mere legal conclusion; the indictment should give the name of the officer to whom the notice was given.

U. S. *r.* El Paso & N. E. R. Co., 178 Fed. 846 (1910).

#### RULE OF CONSTRUCTION.

*a.* The act of March 3, 1905, is, in every sense, a remedial statute, and should be so construed as most effectually to accomplish the intention of the legislature in enacting it.

U. S. *v.* Southern Ry. Co., 187 Fed. 209 (1911). Circular No. 50, Office of the Solicitor, Department of Agriculture.

*b.* Courts are not inclined to make constructive crimes, and in this case for alleged violation of the act of March 3, 1905, the general rule that penal statutes must be strictly construed applies.

U. S. *v.* Baltimore & Ohio Southwestern R. Co., 222 U. S. 8 (1911).

*c.* The act of March 3, 1905, should not be construed as confounding unwillful with willful acts by uniting in criminality and penalties the companies to which no notice of quarantine is required to be given with those to which notice is required.

U. S. *v.* Baltimore & Ohio Southwestern R. Co., 222 U. S. 8 (1911).



## APPENDIX.

### THE FEEDING, WATERING, AND RESTING OF LIVE STOCK IN COURSE OF INTERSTATE TRANSPORTATION.

In connection with the enforcement of the Twenty-eight Hour Law (34 Stat. 607), the Bureau of Animal Industry has made investigation of the feeding, watering, and resting of cattle, sheep, swine, and other animals while in the course of interstate transportation. The results of this investigation and the conclusions based thereon are announced as an indication of the views of the Department of Agriculture as to the minimum requirements of the law.

#### FEEDING.

The amount of feed which should be given to different classes of animals varies with the length of time between feedings and the weights of the animals. For each 24 hours the ration for horses and cattle should be not less than  $1\frac{1}{4}$  pounds of hay to each hundredweight of animal; for sheep, not less than  $1\frac{1}{2}$  pounds of hay to each hundredweight of animal; and for hogs, not less than 1 pound of shelled corn, or its equivalent in ear corn or other grain, to each hundredweight of animal. For periods greater or less than 24 hours, the ration should be greater or less, respectively, in the same proportion.

#### UNLOADING.

The only practicable methods for railroads to transport animals, other than hogs, without unloading during each period prescribed by the statute for rest, water, and feeding, are in "palace" or similar stock cars and with emigrant outfits. There are cases in which exceptional facilities complying with the law make unloading unnecessary; for instance, specially equipped cars conveying show animals and blooded stock. In such cases care should be taken to observe the law. In all cases, if animals are not unloaded, sufficient space to permit all the animals to lie down in the cars at the same time must be provided.

Hogs may be fed, watered, and rested without unloading, provided (a) the cars are loaded so as to allow all the animals to have sufficient space to lie down at the same time; (b) the trains are stopped for

sufficient time to allow the watering troughs to be prepared and to allow every hog time to drink his fill; and (c) care is exercised to distribute properly through each car deck sufficient shelled corn, or its equivalent in ear corn or other grain, for each hog.

#### UNLOADING PENS.

All pens into which animals are unloaded must contain adequate facilities for feeding and watering and suitable space on which the animals can lie down comfortably for resting. Covered pens should be provided for unloading animals in severe weather.







